TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 126.

THE AMERICAN BOOK COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS *EX REL.* GALEN NICHOLS, COUNTY ATTORNEY OF SHAWNEE COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED SEPTEMBER 8, 1906.

(18,658.)

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1 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS on the Relation of The County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
} Transcript of Record.

Be it remembered, that on the 7th day of June A. D. 1902, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition in *quo warranto* in the above entitled action which petition is in words and figures following, to-wit:

2 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS on the Relation of THE COUNTY ATTORNEY of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
} No. —.

Petition.

Galen Nichols, county attorney of the county of Shawnee in the State of Kansas, who prosecutes for said State, comes now unto the supreme court of the State of Kansas; and in behalf of said State gives the court to understand and be informed that: The defendant, The American Book Company, is a corporation, incorporated under and by virtue of the laws of a State other than the State of Kansas, to wit, the State of New Jersey, and having no other corporate rights, privileges, or powers in the State of Kansas, than those granted by the general laws of said State concerning foreign corporations; that for more than three years last past, said American Book Company has exercised and still does exercise in the State of Kansas and in the county of Shawnee, certain corporate powers not conferred upon it by law; and has omitted certain acts prescribed by the laws of Kansas, which amounts to a forfeiture of all privileges secured by said laws to wit:

The corporate power of making, entering into, and signing contracts in the said State with school-boards, the Kansas school text book commission and other persons resident of Kansas for
3 the sale, supplying and furnishing of text-books and the actual furnishing of school-books, for use by the pupils of the State of Kansas, the said company during the month of May, 1902, entered into a contract with the Kansas State text-book commission in said county and State for the furnishing of certain school-books, for use in the schools of Kansas, for the ensuing five years, by the terms of which said contract, the said defendant has secured the right to furnish certain books for use in the schools of the State of Kansas, from said State text-book commission, and is now doing

business in the State of Kansas and is carrying out its said contract by the placing stocks of books in the different counties for sale under said contract, in all of which said business in the sale of its said books and in the entering into of the contract so described with the said text-book commission, and the doing of said business, the said American Book Company was acting and is now acting in said county in violation of chapter 23 of the General Statutes of the State of Kansas of 1902, and the said defendant has unlawfully and willfully persisted in the violation of the provision of said laws in this to wit:

First. That the said American Book Company has failed and neglected to make an application to the charter board of the State of Kansas for authority to do business in the State of Kansas, as a foreign corporation.

Second. Said American Book Company has willfully neglected for more than three years and for all of the time during which it was illegally doing business in the State of Kansas, to comply with the provision of the statute, requiring said corporation to file in the office of the secretary of state, within thirty days after the taking effect of said act, to wit, January 11, 1899, as a condition precedent to doing business in the State of Kansas, its written consent, irrevocable that actions may be commenced against such corporation in the proper court of any county in this State, in which the cause of action arose.

Third. Said American Book Company has unlawfully and willfully refused to file with the secretary of state a complete detailed statement of the condition of such corporation, as provided
4 by said law, by reason of which said failure to comply with said law, all of defendant's rights, under and by virtue of the provision of said law, have been forfeited, and all of the contracts entered into by said company in the State of Kansas, and all business transacted by it in said State, have been made and entered into and conducted by the exercise of corporate powers not conferred upon it by the laws of said State, but in total disregard of all of the provisions of the law applicable in such cases and against the policy of the State, and the said unlawful acts aforesaid and the unlawful continuance of the defendant to do business in the said State of Kansas, have caused and are causing great injury to the plaintiff and to the public.

Said county attorney further informs the court that he has no other plain and adequate remedy except as herein prayed. Wherefore the said county attorney on behalf of said State prays that the said defendant be required to show by what warrant or authority it exercises corporate rights and enters into and transacts business as a corporation in the State of Kansas; and that it may be ousted for ever from the exercise of such usurped corporate power, and that the contract entered into with the Kansas text-book commission may be declared null and void, and for such other relief as may be proper and for the cost of this proceeding.

GALEN NICHOLS,
County Attorney Shawnee County, Attorney for Plaintiff.

Endorsed: No. 13194.—The State of Kansas *ex rel.* County Attorney, plaintiff, *vs.* The American Book Company, a corporation, defendant.—Petition.—In *quo warranto.*—Filed June 7, 1902. D. A. Valentine, clerk supreme court.—Galen Nichols, Co. att'y, attorney for plaintiff.

5 And afterwards, and on the same day, to-wit, the 7th day of June 1902, the plaintiff in said action filed the affidavit of Galen Nichols, county attorney, which was in words and figures following:

6 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.*, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } No. —.

STATE OF KANSAS,
Shawnee County, } *ss:*

Galen Nichols being sworn says: That he is the county attorney of Shawnee County, Kansas, and as such makes the application to this court for an order of *quo warranto* in the above case, and states as a reason for bringing the action in this court instead of the district court of Shawnee county; that the State is a party to the proceeding, and the question involved is one affecting the whole public; the defendant, The American Book Company, having entered upon the execution of a contract, affecting every school district in the State and the validity of which is questioned in said proceedings, and a delay in the settlement of said controversy would work a great injury to the public; and a speedy hearing and determination should be had, that the State may be advised what its rights are under the information set out in its cause of action, which speedy determination could not be had in the usual course of proceeding through the inferior court.

He therefore asks this court to entertain his application and grant the order asked for and he will ever pray.

[SEAL.] GALEN NICHOLS,
County Attorney.

Subscribed and sworn to before me this 7th day of June, 1902.
Com. expires Feb.–5–1905.

W. I. JAMISON,
Notary Public.

7 (Endorsed:) No. 13,194.—The State of Kansas, *ex rel.* County Attorney, plaintiff, *vs.* The American Book Company, a corporation, defendant. Affidavit. Filed June 7, 1902. D. A. Valentine, clerk supreme court. Galen Nichols, county att'y, attorney for plaintiff.

And afterwards, and on the same day, to-wit, the 7th day of June, 1902, the plaintiff filed its precipe for summons in said action in words and figures following:

8 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* COUNTY Attorney Shawnee County, Kansas, Plaintiff, *vs.* THE AMERICAN BOOK COMPANY, a Corporation, Defendant.	Precipe for Summons.

The clerk of the court will please issue summons to the American Book Company, a corporation, of New Jersey, in the above entitled case—returnable according to law, directed to the secretary of state of the State of Kansas.

GALEN NICHOLS,
County Attorney Shawnee County, Kansas.

(Endorsed:) No. 13194—The State of Kansas *vs.* The American Book Company—Precipe for summons—Filed June 7, 1902, D. A. Valentine, clerk supreme court.—Galen Nichols, county attorney.

9 And afterwards, and on the same day, to-wit, the 7th day of June, 1902, a summons was issued in said action out of said supreme court which said summons was returned and filed on the 9th day of June, 1902, the summons and return thereto with all endorsements being in words and figures following:—

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS on the Relation of THE COUNTY Attorney of Shawnee County, Plaintiff, *vs.* THE AMERICAN BOOK COMPANY, a Corporation, Defendant.	Summons.

The State of Kansas to the secretary of state of the State of Kansas, Greeting:

You are hereby commanded to notify the American Book Company, of New Jersey, that it has been sued in the supreme court of the State of Kansas, and that it must answer the petition filed against it by the plaintiff, The State of Kansas, on the relation of Galen Nichols, county attorney of Shawnee county, Kansas, on or before the 18th day of July, 1902, or the said petition will be taken as true and judgment rendered accordingly.

You will make the return of this writ on or before the 17th day of June, 1902, according to law.

In witness whereof, I have hereunto signed my name and affixed

the seal of said supreme court of Kansas at my office in the city of Topeka, this 7th day of June, 1902.

D. A. VALENTINE,
[SEAL.] *Clerk Supreme Court of the State of Kansas.*

STATE OF KANSAS, }
Office of the Secretary of State. }

June 7th, 1902, I received this writ, and I hereby certify that on June 9, 1902, I served the same on the within named defend-
10 ant, The American Book Company, by transmitting to *Gilman H. Tucker, secretary of said* defendant at New York city, N. Y., by registered mail, a duly certified true copy of the within summons, with all of the endorsements thereon.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 9th day of June, 1902.

[SEAL.] GEO. A. CLARK,
Secretary of State.

Endorsements: No. 13194. The State *ex rel.* Co. Att'y Shawnee County, *vs.* The American Book Company.—Summons.—Issued June 7, 1902; returnable June 17, 1902; answer day, July 18, 1902.—Filed Jun- 9, 1902, D. A. Valentine, clerk supreme court.—

11 And afterwards, to wit, on the 11th day of July 1902 the plaintiff filed the affidavit of Galen Nichols, county attorney for an injunction in said action which affidavit is in words and figures as follows:

12 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS on the Relation of THE COUNTY Attorney of Shawnee County, Plaintiff, } No. —.
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.

STATE OF KANSAS, }
Shawnee County, } *ss:*

Affidavit for Injunction.

Galen Nichols, being sworn according to law, says: That he is the county attorney of Shawnee county, Kansas, and that he is acquainted with the facts herein stated; and that he has filed a petition in the supreme court of the State of Kansas against the defendant, a corporation organized in a State other than the State of Kansas, charging it with attempting to do business in the State of Kansas, contrary to the provisions of the laws of said State, and asking that the said defendant company be required to show by what authority it seeks to do business in said State.

And he alleges that the said defendant company has failed to comply with the provisions of the law of this State either by making an application to the charter board of the State of Kansas as a foreign corporation or by filing its annual statement as provided by law for those foreign corporations doing business in the State at the time of the taking effect of said act, and for having failed to comply with any of the provisions of said act, relating to foreign corporations; that the said defendant company is now attempting to place stocks of school books with its agents in the State of Kansas
13 for the purpose of complying with a contract made by said defendant company with the Kansas school text-book commission, which said contract entered into by said defendant company, this affiant believes to be null and void; that the furnishing of said school-books and the attempt by said defendant company to comply with its said contract, during this litigation, would produce injury to the plaintiff and the public and would render nugatory any judgment of this court that might be rendered in case the prayer of the petition should be granted, and such business transacted by said defendant company at this time would be in violation of the plaintiff's rights and would render its judgment ineffectual.

He therefore asks that an injunction be granted, restraining said defendant from entering into any contract with any person in the State of Kansas, and from the furnishing of school-books to its agents in said State, and from the transaction of any business of any kind in the State of Kansas; and that on a final hearing of said application that the said injunction may be made perpetual and the said defendant for ever enjoined from doing business in the State of Kansas.

GALEN NICHOLS.

Galen Nichols county attorney being sworn says he has read the foregoing affidavit and that the matter and things therein contained are true as he verily believes.

Subscribed and sworn to before me this 10 day of July, 1902.

[SEAL.] M. F. LAYCOCK.

(Endorsed:) No. 13194. The State of Kansas *ex rel.* County Att'y Shawnee County, plaintiff, *vs.* The American Book Company, a corporation, defendant. Affidavit. Filed July 11th 1902 D. A. Valentine clerk supreme court. Galen Nichols, attorney for plaintiff.

14 And afterwards, to wit, on Friday the 11th day of July 1902 before the Hon. E. W. Cunningham, justice of the supreme court of the State of Kansas at his chambers in the city of Topeka the following proceeding was had and remains of record at page 165 of Journal "FF" of said supreme court of the State of Kansas and is in words and figures following:

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
No. 13194.

And now, on the 11th day of July, 1902, at chambers, comes the said Galen Nichols, attorney for plaintiff, and thereupon the application for an injunction of the said plaintiff came on to be heard, and after hearing the evidence adduced and the argument of counsel, it is considered and ordered that an injunction issue in this case, as prayed for in said petition to restrain the said American Book Company, defendant, from entering into any contract with any person in the State of Kansas and from the furnishing of school-books to its agents in said State and from the transaction of any business of any kind in the State of Kansas, until the further order of the court or some justice thereof. And it is further ordered that said order of injunction be issued by the clerk of said court and that the same be served on the defendant herein.

15 And thereupon, and on said 11th day of July, A. D. 1902, there issued out of said supreme court of Kansas an order of injunction, which, together with the return of the secretary of state and other endorsements thereon, is in words and figures following:

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS on the Relation of GALEN NICHOLS, County Attorney, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
No. —.

Order of Injunction.

To the American Book Company, a corporation, defendant, Greeting:

You are hereby notified and warned that The State of Kansas, plaintiff, has this day duly obtained an order of injunction in an action pending in the supreme court of the State of Kansas, wherein The State of Kansas is plaintiff and you are defendant.

This is, therefore, to command you to refrain from entering into any contract with any person in the State of Kansas, or from the furnishing of school books to your agents in said State, and from the transaction of any business of any kind in the State of Kansas.

And this you will in no wise omit to do under the penalty of the law.

Witness my hand and the seal of said court at Topeka this 11th day of July, 1902.

[SEAL.]

D. A. VALENTINE,
Clerk Sup. Ct.,
By H. L. ARMSTRONG, *Dep.*

16 THE STATE OF KANSAS, }
Executive Department. }

OFFICE OF THE SECRETARY OF STATE.

Received this order July 12th, 1902, and on July 14th, 1902, I served the same on the within named defendant, "The American Book Company," by transmitting by registered mail to Gilman H. Tucker, secretary of said defendant, at New York city, N. Y., a true copy of the within order of injunction, with all of the endorsements thereon duly certified.

Witness my hand and official seal, this 14th day of July, A. D. 1902.

[SEAL.] GEO. A. CLARK,
Secretary of State.

(Endorsed:) No. 13194. The State of Kansas, *vs.* The American Book Company. Order. Issued July 11, 1902. Filed July 14, 1902. D. A. Valentine, clerk supreme court.

17 And afterward, on the 15th day of July, A. D. 1902, the defendant, The American Book Company, filed its motion to vacate and set aside the order of injunction theretofore made, which motion is in words and figures following:

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant.

Now comes the defendant, The American Book Company, and moves the court here to vacate and set aside the order heretofore, to-wit, on the 11th day of July, 1902, made by the Honorable E. W. Cunningham, one of the justices of this court, awarding to the plaintiff an injunction, for the following reasons, to-wit:

I.

That neither the court nor any of its justices has jurisdiction or power to make said order in said cause.

II.

That the effect of the said injunction if continued is a substantial and final judgment in said action in that it deprives this defendant of the right to continue in the transaction of business in Kansas in advance of a trial and judgment upon the merits; that such being the effect of the said order, it is not due process of law and the said defendant has thereby been deprived of such due process of law and has been denied the equal protection of the laws and the said order is in consequence violative of the 14th amendment to the

Constitution of the United States, and this defendant expressly invokes the protection of the said amendment.

III.

That this defendant is engaged in Kansas solely in the business of interstate commerce; that the plant and factory of said defendant where its books are prepared and manufactured are in another State and the books supplied by the defendant to its con-
18 sumers and to the public in Kansas are manufactured and shipped by said defendant from points in other States to points in the State of Kansas and there sold and delivered; that the only business which the defendant is transacting in the State of Kansas is the shipment to the State and the sale within the State of its books manufactured outside of the State. That by reason of the premises this defendant is not within the provisions of chapter 10 of the Session Laws of 1898, and the amended statutes of the State of Kansas, and is protected in its right to transact business in the State of Kansas by section 8, article I of the Constitution of the United States, and this defendant expressly invokes the protection of said section of the Constitution.

IV.

That the said order was improvidently issued without notice to the defendant or any of its counsel, and without any opportunity by them to be heard and was issued upon an *ex parte* application of the attorneys for the plaintiff and as this defendant is informed and believes, and therefore charges the fact to be, upon an affidavit filed in said cause by the county attorney merely upon information and belief and without the said county attorney being advised of the facts or in the position to testify with reference to the same.

V.

That the petition in this action fails to state a cause of action in that it nowhere appears that a forfeiture of the right to transact business has been declared by the State charter board, which is a necessary condition precedent to said suit.

VI.

Construing said petition as an equitable proceeding, in which an interlocutory injunction might issue, and conceding the jurisdiction of this court in a proceeding of such character, which this defendant denies, the said petition is further fatally defective by reason of the defect of parties defendant.

VII.

The affidavit of the county attorney upon which the writ
19 was issued is insufficient in form; being upon information and belief, it states nothing but conclusions and not the facts

upon which they are based, and the conclusions therein stated are false and unwarranted deductions from the facts touching and concerning said matter.

VIII.

That this defendant has in fact complied with chapter 10 of the Laws of 1898, not by reason of any admission that the said law is operative upon it, but out of a decent regard to the construction placed upon said law by the authorities of the State.

IX.

That there is now pending in the district court of Shawnee county Kansas, a certain suit instituted by the State of Kansas on the relation of the county attorney of Shawnee county, against this defendant, being case No. 21,691; wherein the said plaintiff is seeking to obtain the same relief as that sought to be obtained here, and in which the issues are identical with those in the case at bar. That in said action so pending in the district c-urt of Shawnee county the plaintiff obtained a restraining order, and thereafter on the 3rd day of June, 1902, the hearing of its application for a temporary injunction occurred. Whereupon, upon full argument and being well advised in the premises, the court overruled and denied said application for a temporary injunction and set aside the said restraining order. That thereupon the said plaintiff took leave to amend its petition. That the said order of June 3, denying the application for temporary injunction still remains of record in said court in full force and effect, wholly unreversed and unappealed from, and by reason of the premises there has been for the purpose of this case and at this stage of the litigation an adjudication between the parties upon said question.

X.

That the continuance of this writ of injunction would result in irreparable injury of this defendant without any means of redress if it shall ultimately defeat plaintiff's contention in the case.

XI.

That the public at large as well will suffer great damage and inconvenience by the continuance of this injunction.

20 XII.

That this proceeding, as well as the one pending in the district court of Shawnee county, have been instituted not for any public purpose, but to serve the private ends of a corporation organized under the laws of the State of New Jersey, to-wit, George W. Crane & Company, an unsuccessful competitor of the defendant in the bidding before the State text book commission.

Wherefore, by reason of the foregoing and by reason of other

sufficient and manifest errors appearing upon said record, this defendant prays as aforesaid.

F. DUMONT SMITH,
A. M. HARVEY,
ROSSINGTON, SMITH & HISTED,
H. G. LARIMER,
Attorneys for Defendant.

(Endorsed:) No. 13194. Supreme court. State *ex rel. vs.* American Book Co.—Motion to set aside injunction. Filed Jul- 15, 1902, D. A. Valentine, clerk supreme court. Rossington, Smith & Histed, attorneys for def't.

21 And afterwards, and on the 16th day of July, 1902, the defendant filed in said action the affidavit of A. M. Harvey, which is in words and figures, to-wit:—

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } No. 13194.

Affidavit.

STATE OF KANSAS, *Shawnee County,* } *ss:*

I, A. M. Harvey, of lawful age, being duly sworn on oath says: That at the time of the enactment of chapter ten of the Laws of Kansas, of the Special Session of 1898, the American Book Company, was engaged in selling school text books and reference books to the people of the State of Kansas and has continued in that business from that date to the present time; which school text books and reference books were and are manufactured in a State other than the State of Kansas, and shipped from points outside of the State of Kansas to points within the State of Kansas, there to be sold and delivered.

That the American Book Company, on the 5th day of May, 1902, filed with the secretary of state its irrevocable written consent that actions might be commenced against it in the proper court of any county in the State, in which the cause of action might arise, or in which the plaintiff might reside, by the service of process on the secretary of state, as provided in chapter ten of the Laws of Kansas, Special Session of 1898.

That on the 10th day of May, 1902, the attorney general of the State of Kansas, demanded of the American Book Company, through one of its attorneys, that a showing be made to the charter board of

22 the State of Kansas as to whether said American Book Company was doing business within the State of Kansas at the time of the going into effect of said chapter ten of the Laws of Kansas, Special Session, 1898; and pursuant to said demand said American Book Company filed with the secretary of state an affidavit, in writing, setting forth in detail the character and nature of its business as transacted in Kansas during the year 1898 and from that time until the present time; and afterwards the said charter board, at a meeting held in the office of the secretary of state, considered the showing so made by the American Book Company and informed said company that said showing was sufficient to entitle it to file its consent to be sued as a corporation that had been doing business in the State of Kansas at the time of the enactment of the said chapter ten of the Laws of Kansas, Special Session, 1898.

That on the 31st day of May, 1902, said American Book Company filed its annual report with the secretary of state in accordance with law.

That when said chapter ten of the Laws of Kansas, Special Session, of 1898, was enacted and from that time until the month of May, 1902, the construction put upon said statute by the attorney general, the State superintendent of public instruction and the State text-book commission did not require foreign corporations to comply with the corporation laws as a condition precedent to contracting with the text-book commission or selling books under such a contract and on this account the American Book Company, as well as Scott, Foresman & Company; D. C. Heath & Company; Rand, McNally & Company, and other foreign corporations that were doing business in Kansas under contract with the text-book commission, did not make any effort to comply with the corporation laws of the State until the attorney general, in May, 1902, made a ruling that all such companies should comply with said corporation laws and then each of the above named companies, under the order of the attorney general and the supervision of the charter board, did comply with said corporation laws in the same manner and after the same form as did the American Book Company.

That the business now being done and contemplated in the State of Kansas by the American Book Company consists wholly in selling to the people of the State of Kansas books manufactured
23 in a State other than the State of Kansas, and shipped from points outside of the State of Kansas to points within the State of Kansas, there to be sold and delivered.

Further affiant saith not.

A. M. HARVEY.

Subscribed and sworn to before me this 16 day of July, 1902.

H. L. ARMSTRONG,
Deputy Clerk Sup. Ct.

[SEAL.]

Endorsed: No. 13191.—Supreme court.—State of Kansas *vs.* American Book Co.—Affidavit of A. M. Harvey.—Filed July 16, 1902. D. A. Valentine, clerk sup. court.—Rossington, Smith & Histed, attorneys for defendant.

24 And afterward, and on the 16th day of July, 1902, the defendant filed the affidavit of A. M. Harvey in said supreme court, which is in words and figures following:

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant.
} No. 13194.

Affidavit.

STATE OF KANSAS, *Shawnee County,* } ss:

I, A. M. Harvey, of lawful age, being duly sworn on oath say that on the 31st day of May, 1902, an action was commenced in the district court of Shawnee county, Kansas, wherein The State of Kansas was plaintiff and The American Book Company was defendant and that the subject matter of said action was the same as the case at bar. A true copy of the petition filed in said action is hereto attached, marked "A" and made a part of this affidavit. That in said action a restraining order was issued and the application for a temporary injunction was set down for hearing in said court for the 3rd day of June, 1902. That on the 3rd day of June, 1902, said cause came on to be heard in said court on the application for a temporary injunction and after argument of counsel and consideration by the court, the court made an order denying the application for a temporary injunction and dissolved the restraining order theretofore issued, and said order, so made, now stands of record in said court in full force and effect and unappealed from. The plaintiff then asked for leave to amend its petition which leave was by the court granted. That said cause is still pending and undetermined in said court.

25 Further affiant saith not.

A. M. HARVEY.

Subscribed and sworn to before me this 16th day of July, 1902.

H. L. ARMSTRONG,
Deputy Clerk Sup. Ct.

[SEAL.]

"A."

In the District Court of Shawnee County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } 21691.

Petition.

Comes now the plaintiff herein, Galen Nichols, the county attorney of the county of Shawnee, in the State of Kansas, and for his cause of action herein says:

First. That the American Book Company is a corporation, incorporated under and by virtue of the laws of a State other than the State of Kansas. That said American Book Company is a corporation engaged in the business of publishing and selling school books, and has been illegally engaged in the business of selling its books in the State of Kansas for the past three years, during which time it has presented to the school boards of the State, its books for use in the schools of Kansas, and has sold to the boards of education and to the pupils of the State of Kansas, certain of its books and publications, and has entered into contract for the furnishing of school books for use in the State, all of which books were published outside of the State of Kansas and by the said American Book Company. And the said American Book Company appeared before the Kansas State text-book commission on the 5th day of May, 1902, in the city of Topeka, with a bid, offering to furnish certain school books for use in the schools of Kansas for the ensuing five years, and were seeking to do business in the State of Kansas as a foreign corporation, through said text-book commission,
26 and did secure from said text-book commission an adoption of certain of its books for use in the schools of Kansas; and is now seeking to have said text-book commission sign a contract with said American Book Company, giving to said company the right to furnish the books so adopted. That all of its said acts in the soliciting of business in the State of Kansas, for the sale of school books in the State of Kansas, and in its bid before the said text book commission, a commission provided for by the laws of the State of Kansas, the said American Book Company was acting in said county, in violation of chapter 23 of the Compiled Laws of the State of Kansas of 1901; and has unlawfully and willfully persisted in such violation of the plain provision of said laws, in this, to-wit:

First. That the said American Book Company has failed and neglected to make an application to the charter board of the State of Kansas for authority to do business in the State of Kansas as a foreign corporation.

Second. Said American Book Company has willfully neglected,

for more than three years, and for all of the time during which it was illegally doing business in the State of Kansas, to comply with the provisions of the statute requiring said corporation to file in the office of the secretary of state, within thirty days after the taking effect of said act, to-wit, January 11, 1899, as a condition precedent to doing business in the State of Kansas, its written consent, irrevocable, that actions may be commenced against such corporation in the proper court of any county in this State in which the cause of action arose.

Third. That said American Book Company has unlawfully and willfully refused to file with the secretary of state a complete detailed statement of the condition of such corporation, as provided by said law, by reason of which said failure to file said statement by the said American Book Company, whatever right or authority it had to do business in this State by reason of its claim that it was doing business in this State at the time said corporation law took effect, all of the defendant's rights, under and by virtue of the provisions of said law have been forfeited and the said unlawful acts aforesaid, and the unlawful continuance of the defendant to
27 do business in the State of Kansas, have caused and are causing great injury to the plaintiff and to the public.

Wherefore, the plaintiff prays judgment against the said defendant that all the rights and privileges of whatever kind the said defendant claims, be declared forfeited, and that the defendant be forever enjoined from doing business in the State of Kansas, and that the defendant be adjudged to pay the costs of this proceeding.

GALEN NICHOLS,
County Attorney, Shawnee County, Kansas.

Præcipe.

The clerk will please issue summons in the above entitled cause, directed to George A. Clark, secretary of state, commanding him to summon the defendant American Book Company to appear and answer in said case.

GALEN NICHOLS,
County Attorney, Shawnee County, Kansas.

Restraining order granted.
Filed May 31, 1902.

A. M. CALLAHAM,
Clerk District Court.

(Endorsed:) No. 13194—Supreme court—State of Kansas *vs.* American Book Com.—Affidavit of A. M. Harvey—Filed Jul- 16, 1902. D. A. Valentine, clerk supreme court.—Rossington, Smith & Histed, attorneys for defendant.

28 And afterward, to-wit, on the 18th day of July, A. D. 1902, the defendant in said action filed its answer to the petition

of the plaintiff, which said answer is in the words and figures following, to-wit:—

29 Filed Jul- 18, 1902. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant.
} No. 13194.

Answer.

Now comes the said defendant and for its answer to the petition of plaintiff herein, says:

I.

That it denies each and every allegation in said petition contained, not hereinafter expressly admitted or qualified.

II.

Defendant admits that it is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. Defendant further says that on or about the 31st day of May, 1902, this defendant duly executed certain contracts in writing with the Kansas State text book commission; which said contracts were duly executed by the chairman and the secretary of the Kansas State text book commission, duly authorized therefor. Copies of which said contracts are hereto attached, marked Exhibits "A, B and C," and made a part of this answer.

At the same time this *this* defendant executed its bond, or obligation, for the faithful performance on the part of this defendant of the said contracts, which said bond was thereafter and in due time duly approved by the executive council of the State of Kansas. A copy of which said bond is hereto attached, marked Exhibit "D," and made a part of this answer.

30 III.

And this defendant further answering says that at the time of bringing this suit, and now, the business of this defendant within the State of Kansas was and is solely that of inter-state commerce. That the only business of any character transacted by this defendant within the State of Kansas has been, and is, that of selling school text books, reference books, and other publications, to dealers and merchants in the State of Kansas. That this defendant is the owner of certain copyrights and prepares and manufactures its own books and publications. That for such purposes this defendant owns and operates in Cincinnati, Ohio; Chicago, Illinois, and New York city, certain factories and binderies, wherein the type for its publications

is set and the same are completely printed, bound and prepared for sale and transportation to customers. That this defendant does not now, and did not at the time of the bringing of this suit, own any property connected with the manufacture and sale of said business within the State of Kansas, nor any other property whatsoever within the said State. That this defendant has been, and is now, engaged in selling its said publications to dealers and merchants located at various points in the State of Kansas and other States of the United States, and in making such sales packs and ships its said publications over appropriate rail roads, consigned to the persons to whom they are sold, and delivers them to the consignees in the original packages in which they were packed for shipment. That with reference to the State of Kansas all sales of such merchandise made by this defendant are of goods manufactured and shipped from points in other States to points within the State of Kansas and there delivered in the original packages to such purchasers. That this defendant, prior to the passage of the act of 1898, made and executed certain contracts with school districts fixing the price at which this defendant would sell certain publications to the public, which said contracts continued in force at the time of the passage of the said act, and some of which are still in force. That the only purpose and scope of said contracts was the fixing of the price at which publications might be sold and delivered by this defendant to such dealers or persons as might thereafter choose to buy. And such contracts are merely incidental features of the inter-state business of this defendant hereinbefore set out. That such has been the sole character of the business in which this defendant has been engaged in the State of Kansas for many years last past, and said defendant was engaged in such business at the time of the passage of chapter 10, of the Session Laws of 1898.

31 And this defendant further answering says that by reason of the premises chapter 10, of the Special Session Laws of Kansas for the Year 1898, and chapter 125 of the Session Laws of 1901, do not apply to this defendant, and this defendant is not amenable thereto. That if said statutes be construed as applicable to this defendant then the same are in violation of the provisions of section 18, of article 1, of the Constitution of the United States, in that they seek to regulate and impose burdens and restraints upon interstate commerce, and this defendant hereby expressly invokes the protection of the said section of the Constitution of the United States.

III½.

And this defendant further answering, refers to, adopts, and makes a part hereof the third paragraph of its answer. And further answering this defendant says that if the said act of 1898, as amended, be construed as applicable to this defendant, and to authorize the court in this proceeding to grant the judgment of ouster, therein prayed, then the said act is in violation of section 10, article 1, of the Constitution of the United States, in so far as it attempts to interfere with the due performance by this defendant of its contracts made

and entered into prior to the passage of said act which are in force, it being a law impairing the obligation of contracts, and this defendant expressly invokes the protection of the Constitution of the United States in that behalf.

IV.

And this defendant further answering such parts of the petition as seek to determine the validity of the contracts hereinbefore set forth, and to annul and vacate the same, respectfully denies the jurisdiction of this court in that behalf. That the matter so sought to be involved is one of equitable cognizance and this court, in this proceeding, does not possess equitable jurisdiction and has no power, right, or authority to enter into the trial of the validity of said contracts, or render the judgment sought by the plaintiff in that behalf, or any other judgment in respect thereto.

32

V.

And further answering this defendant says that assuming the equitable jurisdiction of this court to enter into an inquiry and determination of the question set forth in paragraph IV hereof, (which this defendant denies), there is a defect of parties defendant, to wit: The State of Kansas and the State text book commission. And no judgment can be entered affecting the rights or obligations of this defendant respecting said contracts or bond in the present condition of this record or in a proceeding of this character.

VI.

And this defendant hereby refers to, adopts, and makes a part hereof, without further repetition, paragraphs IV and V of this answer. And further answering said defendant says that the effect of a trial and determination, adverse to the rights of this defendant, under its contracts and bond, hereinbefore set forth, in this suit would not be due process of law, and this defendant would thereby be deprived of its property without due process of law, within the meaning of the fourteenth amendment to the Constitution of the United States. That this proceeding, in so far as it attempts to adjudicate the rights of this defendant, under its contracts, is in violation of the said provision of the fourteenth amendment to the Constitution of the United States, in that it subjects this defendant to a trial in a court which does not possess jurisdiction of the subject-matter, and in that it is an attempt to adjudicate the rights and obligations of this defendant upon its contracts and bond without the presence of the other party thereto, and without affording by such pending adjudication any protection to this defendant against the liabilities incurred by said contracts and bond. And this defendant expressly invokes the protection of the said amendment.

33

VII.

And further answering this defendant refers to, adopts and makes a part hereof, paragraphs IV, V and VI of its answer, the same as

if repeated herein, and says that a trial and determination, adverse to this defendant, of the rights and obligations under the contracts and bond, hereinbefore set forth, in this action would be a denial to this defendant of the equal protection of the laws as guaranteed to this defendant by the fourteenth amendment to the Constitution of the United States, in that, both by the constitution and statutes of the State of Kansas and the decisions of the State supreme court, the supreme court does not possess original equitable jurisdiction; in that it is an attempt, in a *quo warranto* proceeding, to try and determine matters of equitable cognizance and adjudicate the rights and liabilities of this defendant upon its contracts and bond, whereas by the constitution and laws of the State of Kansas and the decisions of the supreme court of the State, this court, in this action, does not possess such jurisdiction; and such jurisdiction has been uniformly denied in proceedings in *quo warranto* in which other citizens of the State of Kansas, or other corporations, have been parties defendant. And this defendant expressly invokes the protection in that behalf of the said fourteenth amendment to the Constitution of the United States.

VIII.

On or about the 31st day of May, 1902, the plaintiff herein commenced an action in the district court of Shawnee county, Kansas, against this defendant, the purpose and object of which said suit being to oust this defendant from the State of Kansas and to prohibit and enjoin this defendant from doing business in the State of Kansas. That said action is identical in every respect with the action at bar. That the said court has jurisdiction of this defendant and said action is still pending therein. That this court ought not, therefore, to hear or determine this action, and this action should be dismissed.

34 IX.

This defendant makes the next preceding paragraphs of this answer a part of this paragraph, as fully as if herein set out. And further answering defendant says that on the 31st day of May, 1902, in the said action in the district court of Shawnee county, Kansas, plaintiff obtained, by consideration of the judge of said court, a temporary order restraining and enjoining this defendant from doing business in the State of Kansas, which said temporary restraining order was effectual to the 3rd day of June, 1902. On said last date, in said action, the plaintiff presented to the district court of Shawnee county, its application for a temporary injunction. That thereupon and on the said day said cause came on to be heard and the court, after due consideration, overruled the application for the said temporary injunction and set aside the said restraining order theretofore granted. That the judgment of the said district court, therein, remains in full force and effect, unreversed and unappealed from, and the same is a full and complete adjudication of the rights of the plaintiff and the defendant.

X.

The defendant further answering says that it has duly complied with all the requirements of the laws of the State of Kansas affecting foreign corporations; has duly filed with the secretary of state its irrevocable consent to be sued in the courts of the State and duly filed with the secretary of state, on or about the 30th day of May, 1902, the annual report of its business and has received from said secretary of state a certificate of said facts, and is thereby authorized to do business within the State of Kansas.

XI.

Defendant further answering says that at the date of the enactment of chapter 10, of the Laws of 1898, and ever since that time, this defendant has been engaged in the business of selling school books and other publications in the State of Kansas, and also had certain contracts with various school districts and school boards in the State of Kansas for supplying school and other books to
35 said school districts and boards and to the schools of Kansas. That on or about the — day of May, 1902, this defendant filed with the secretary of state its consent, irrevocable, to be sued in said State. That on or about the 30th day of May, 1902, an inquiry was duly instituted by the charter board of the State of Kansas respecting the status of this defendant as a corporation engaged in business prior to the enactment of the act of 1898, and its exemption in that behalf from the liability for the fees and charges prescribed by said law and its amendatory statute of 1901. That the evidence was duly presented and heard by said charter board upon the said subject, and upon due consideration the said charter board found and determined that this defendant was not subject to the fees and charges referred to by reason of the fact that it was engaged in business in the State of Kansas at the time of the passage of said law. That thereupon, upon the said 30th day of May, 1902, this defendant, relying upon the determination of the said charter board, and also upon the opinion and instruction of the attorney general of the State of Kansas to the same effect, and believing that it might lawfully so do, and that it would thereby meet and comply with all the terms and requirements of the statutes of Kansas in that behalf, filed with the secretary of state its annual report as required by law, and thereupon the secretary of state issued to this defendant his certificate, in such cases made and provided. And this defendant avers that the said determination of said charter board was a judicial act and a final adjudication of the rights of this defendant in the premises and that said charter board has never declared or published a forfeiture of the right of this defendant to do business in the State, but on the contrary the secretary of state, the said charter board and the attorney general fully acquiesce in and recognize the complete right and authority of this defendant to do business in the State of Kansas.

This defendant respectfully submits that this court has no power

or authority in this action to review or reverse the determination and decision of the charter board, or to change or modify the
36 action of the said charter board, or to oust this defendant from the State in the face of the action of said board and of the departments of state, charged with the administration of said law, as hereinbefore set forth.

XII.

This defendant further answering says that the charter board of the State of Kansas has never at any time declared a forfeiture of the right of this defendant to do business in the State of Kansas, and has at no time published any declaration of such forfeiture in the official State paper. That such declaration and publication are conditions precedent to the jurisdiction of the court in this action, and by reason of the premises this defendant denies the jurisdiction of the court in this case, and asks that the same may be dismissed.

XIII.

Defendant further answering says that ever since the enactment of chapter 10, of the Laws of 1898, it has been the unvarying custom of the charter board of the State of Kansas to permit corporations doing business at the date of the passage of said act, to comply at any time with the terms of said act, relating to foreign corporations, by filing the consent to be sued and the annual report, therein required. That the attorney general of the State of Kansas has so interpreted said act and has uniformly ruled that foreign corporations, doing business in the State at the passage of said act, might comply with the terms of said act at any time by filing their consent to be sued and their annual report. That on or about the 5th day of May, 1902, the State text book commission duly convened according to law for the purpose of receiving bids for the supplying of text books to the schools of Kansas for the term of five years commencing with the first day of September, 1902. The said text book commission invited this defendant, to submit bids for the supplying of said books. And this defendant, in common with other bidders, standing in a like situation, was informed by the attorney general of the State of Kansas and by the said text book commission that its bids would be received and considered without its
37 having complied, as a condition precedent, with the terms of chapter 10, Laws of 1898, and acts amendatory thereto. That thereupon this defendant submitted to the said State text book commission its bids for supplying text books, and its bid for certain books, to-wit: physiologies, geographies and readers, was by the said State text book commission duly accepted. The State text book commission and the attorney general of the State of Kansas thereupon informed this defendant, and all other successful bidders in like situation, that it would be necessary to comply with the said chapter 10, Laws of 1898, by filing their irrevocable consent to be sued and their annual reports, and that the filing of such consents and reports was all that was necessary to authorize the execution of

said contracts and to carry out the same, and that no other or further requirement would be made.

And further answering this defendant says that prior to the time of said bidding it had been the uniform rule of the various officials and departments of the State of Kansas, and such was the interpretation placed upon said law by the attorney general, the charter board, and the text book commission of the State of Kansas, that corporations, like this defendant, were in no respect amenable to the law of 1898, and theretofore contracts for the supplying of text books and school supplies under the State text book law had been duly executed, approved and performed by corporations in the same condition as this defendant, without in any respect complying with the provisions of said corporation act. That it was not until the bidding for such supplies in May, 1902, that any question was even raised as to the application of the corporation act to such corporation transacting such business in the State of Kansas. That thereupon, upon consideration of such question the State authorities, hereinbefore mentioned and described, held and determined that the corporation act of 1898, as amended, did apply to such corporations, but held further that the only provisions of said act which were applicable to this defendant were those which required the filing of a report and a written consent irrevocable, to be sued. The said attorney general interpreted said law and declared that the period
38 prescribed in said act within which reports might be filed was directory and not mandatory, and that under the facts and circumstances of the case it would be a full and satisfactory compliance to make and file said report and consent at the time they were, so as aforesaid, filed. That this defendant, relying upon the interpretation placed upon said act by the plaintiff herein, as represented by the attorney general, the charter board the secretary of state and the State text book commission, and believing that it had in all respects complied with the terms of the statute incumbent upon it to perform, executed the contracts and assumed the obligation hereinbefore set forth. That thereupon, in the honest performance of its contracts, this defendant proceeded with the work of preparing the books specified in its contracts for sale, and is now engaged in such work. That it has already incurred a large amount of expense in that behalf, to-wit, a sum exceeding $20,000.00. And has further assumed obligations and incurred liabilities aggregating many thousands of dollars in addition. That the proclamation of the governor, provided by the text book law, is likely to be issued at any time, all the conditions precedent thereto having been performed. That under the terms of the statute and the bond and contracts of this defendant it is obligated to furnish and ship to customers desiring the books mentioned in its contracts within thirty days from the date of such proclamation. That in no event will the time for the performance of its contracts by this defendant be later than the first of September, 1902. That this defendant, by its contracts is required to furnish forty-five per cent. of all of the school books to be sold to school children, within the State of Kansas, ag-

gregating 400,000. The performance of its obligations will impose upon this defendant the duty of manufacturing, boxing, shipping, and delivering approximately one million volumes within the time limited. And this defendant, in view of the premises, asserts that the State of Kansas is now estopped in equity, law and good conscience from placing a different interpretation upon said corporation act, or from in any way interfering with the performance of its contracts by this defendant, or from ousting this defendant from the State of Kansas.

39 XIV.

The defendant further answering, makes the preceding paragraphs, X, XI, XII and XIII, a part of this paragraph as fully as though set out in full. And this defendant further answering says that the acceptance of the bond and the execution of the contracts by the State text book commission and the approval and acceptance of the bond of this defendant by the executive council of the State of Kansas constitute a complete recognition of the status of this defendant as being lawfully engaged in business within the State of Kansas. That in both the proceeding in the district court of Shawnee county, hereinbefore referred to, and in the case at bar the plaintiff caused summons and process to be issued and served upon the secretary of state as binding upon this defendant, then and thereby recognizing the status of this defendant as a corporation lawful- engaged in business in the State of Kansas. That by reason of the premises the State of Kansas has waived any provision of chapter 10, Laws of 1898, and acts amendatory thereto, not fully complied with by this defendant, if any there be, and has waived the right to object, if any such failure exists upon the part of this defendant, to comply with the laws of this State.

XV.

Defendant further answering says that it asserts and maintains that its business in the State of Kansas is solely that of inter-state commerce, and therefore beyond the regulating control attempted to be exercised by the plaintiff in this suit under the act of 1898, as amended by subsequent statutes. Nevertheless, upon ascertaining the construction and interpretation placed upon said law in May, 1902, by the State of Kansas, through its duly authorized agents and officials, hereinbefore set forth, this defendant, out of a decent regard for the laws of this State, and in good faith attempted to comply with all of the requirements of the laws of the State of Kansas relating to foreign corporations of its class and believes it has fully and completely complied therewith. That if this court should determine
40 that the defendant has failed in any particular to so comply with the laws of the State so as to justify the relief prayed by the plaintiff in whole or in part, then and in that event this defendant here and now tenders full compliance with all of the requirements and prays the court that any judgment adverse to this defendant may be staid for such reasonable time as to enable this

defendant to bring itself within the terms of said act, not already performed, if any there be, and that it may perform its contracts with the State of Kansas and be saved the irreparable loss and damage which a harrassing, inequitable and peremptory judgment of ouster would entail upon this defendant, through no willful fault upon its part. And that in addition the large attendant public inconvenience and loss following the failure to promptly supply to the public schools the text books provided in this defendant's contract may be averted.

ROSSINGTON, SMITH & HISTED,
F. DUMONT SMITH,
A. M. HARVEY,
Attorneys for Defendant.

41 EXHIBIT "A."

This agreement, made and entered into this 31st day of May, A. D. 1902, by and between the State of Kansas, party of the first part, and the American Book Company, a corporation organized under the laws of the State of New Jersey, party of the second part.

Witnesseth, that, whereas, the said party of the second part did on the 6th day of May, 1902, submit its bid for the furnishing of certain school text books for use in the public schools of the State of Kansas under the provisions of article 20, of chapter 92, of the General Statutes of 1901; and

Whereas, said school text book commission did on the 9th day of May, 1902, accept the bid and offer of said party of the second part to furnish the following described books at the following prices, to-wit:

The Elementary Physiology (New Century series), fifty cents.

Now, therefore, in consideration of the adoption of said books for use in the schools of the State of Kansas under the provisions of said law, the said party of the second part hereby contracts, covenants and agrees:

First. That it will, within thirty days after the issuing of a proclamation by the governor of the State of Kansas, announcing the execution of this contract, arrange with at least one dealer or agent at the county seat in each county in the State of Kansas for the handling, sale and exchange of the school books hereinbefore mentioned, which dealer or agent may charge the people of this State a commission of not exceeding ten per cent. on the price above named for the handling and sale of such books. Said second party also agrees that it will furnish said books to any citizen or school district in Kansas at the price above fixed for the sale of such books in cash orders of not less than ten dollars each, and deliver the same at any railroad station in Kansas mentioned in such order.

Second. That said second party will exchange the new books herein contracted to be sold for the corresponding books now in use at not more than fifty per cent. of the maximum price fixed by the provisions of chapter 179 of the Laws of 1897.

42 Third. The books furnished by said party of the second part shall be equal in material, press work, binding and general make up, and the same in matter and contents, as the sample submitted with its said bid.

Fourth. The said party of the second part will during the life of this contract keep on hand and supply to its agents and to purchasrers of said books all the books necessary for use in the schools of the State of Kansas.

Fifth. The State of Kansas shall not be liable to said party of the second part for any sum whatever, but it shall receive its pay and compensation solely and exclusively from the proceeds of the sale of said books.

Sixth. The life of this contract and the time during which it shall be in force and effect shall be five years from the date hereof.

In witness whereof, the party of the first part has caused this agreement to be executed in its behalf by the chairman and secretary of the State school book commission, and said party of the second part has caused the same to be executed by Charles J. Barnes, who is duly authorized and empowered so to do.

AMERICAN BOOK COMPANY,
By CHAS. J. BARNES,
Managing Director,
Party of the Second Part.

FRANK NELSON, *Chairman,*
H. F. M. BEAR, *Secretary,*
Of the State School Text Book Commission,
For the Party of the First Part.

43 EXHIBIT "B."

This agreement, made and entered into this 31st day of May, A. D 1902, by and between the State of Kansas, party of the first part, and the American Book Company, a corporation organized under the laws of the State of New Jersey, party of the second part,

Witnesseth, that, whereas, the said party of the second part did on the 6th day of May, 1902, submit its bid for the furnishing of certain school text books for use in the public schools of the State of Kansas under the provisions of article 20, of chapter 92, of the General Statutes of 1901; and

Whereas, said school text book commission did on the 14th day of May, 1902, accept the bid and offer of said party of the second part to furnish the following-described books at the following prices, to-wit:

The Natural Primary Geography (Kansas edition), thirty cents.

The Natural Complete Geography (Kansas edition), seventy five cents.

Now, therefore, in consideration of the adoption of said books for use in the schools of the State of Kansas under the provisions of said law, the said party of the second part hereby contracts, covenants and agrees:

First. That it will, within thirty days after the issuing of a proclamation by the governor of the State of Kansas, announcing the execution of this contract, arrange with at least one dealer or agent at the county seat in each county in the State of Kansas for the handling, sale and exchange of the school books hereinbefore mentioned, which dealer or agent may charge the people of this State a commission of not exceeding ten per cent. on the price above named for the handling and sale of such books. Said second party also agrees that it will furnish said books to any citizen or school district in Kansas at the price above fixed for the sale of such books in cash orders of not less than ten dollars each, and deliver the same at any railroad station in Kansas mentioned in such order.

Second. That said second party will exchange the new books herein contracted to be sold for the corresponding books now in use at not more than fifty per cent. of the maximum prices fixed by the provisions of chapter 179 of the Laws of 1897.

44 Third. The books furnished by said party of the second part shall be equal in material, presswork, binding and general makeup, and the same in matter and contents, as the sample submitted with its said bid, except as to such changes as have been agreed upon between the said American Book Company and the committee of the text book commission appointed for that purpose, a list of which changes, now on file in the office of the superintendent of public instruction of the State of Kansas, is hereby made a part of this agreement.

Fourth. The said party of the second part will during the life of this contract keep on hand and supply to its agents and to purchasers of said books all the books necessary for use in the schools of the State of Kansas.

Fifth. The State of Kansas shall not be liable to said party of the second part for any sum whatever, but it shall receive its pay and compensation solely and exclusively from the proceeds of the sale of said books.

Sixth. The life of this contract and the time during which it shall be in force and effect shall be five years from the date hereof.

In witness whereof, the party of the first part has caused this agreement to be executed in its behalf by the chairman and secretary of the State school text book commission, and said party of the second part has caused the same to be executed by Charles J. Barnes, who is duly authorized and empowered so to do.

AMERICAN BOOK COMPANY,
By CHARLES J. BARNES,
Managing Director,
Party of the Second Part.

FRANK NELSON, *Chairman,*
H. F. M. BEAR, *Secretary,*
Of the State School Text Book Commission,
For Party of the First Part.

45 EXHIBIT "C."

This agreement, made and entered into this 31st day of May, A. D. 1902, by and between the State of Kansas, party of the first part, and the American Book Company, a corporation organized under the laws of the State of New Jersey, party of the second part,

Witnesseth, that, whereas, the said party of the second part did on the 6th day of May, 1902, submit its bid for the furnishing of certain school text books for use in the public schools of the State of Kansas under the provisions of article 20, of chapter 92, of the General Statutes of 1901; and

Whereas, said school text book commission did on the 16th day of May, 1902, accept the bid and offer of said party of the second part to furnish the following-described books at the following prices, to-wit:

Appleton's First Reader, ten cents,
Appleton's Second Reader, seventeen cents,
Appleton's Third Reader, twenty-three cents.
Appleton's Fourth Reader, thirty cents.
Appleton's Fifth Reader, forty cents.

Now therefore, in consideration of the adoption of said books for use in the schools of the State of Kansas under the provisions of said law, the said party of the second part hereby contracts, covenants and agrees;

First. That it will, within thirty days after the issuing of a proclamation by the governor of the State of Kansas, announcing the execution of this contract, arrange with at least one dealer or agent at the county seat in each county in the State of Kansas for the handling, sale and exchange of the school books hereinbefore mentioned, which dealer or agent may charge the people of this State a commission of not exceeding ten per cent. on the price above named for the handling and sale of such books. Said second party also agrees that it will not furnish said books to any citizen or school district in Kansas at the price above fixed for the sale of such books in cash orders of not less than ten dollars each, and deliver the same at any railroad station in Kansas mentioned in such order.

46 Second. That said party will exchange the new books herein contracted to be sold for the corresponding books now in use at not more than fifty per cent. of the maximum prices fixed by the provisions of chapter 179 of the Laws of 1897.

Third. The books furnished by said party of the second part shall be equal in material, presswork, binding and general make up and the same in matter and contents, as the sample submitted with its said bid, except as to such changes as have been agreed upon between the said American Book Company and the committee of the text book commission appointed for that purpose, a list of which changes, now on file in the office of the superintendent of public instruction of the State of Kansas, is hereby made a part of this agreement.

Fourth. The said party of the second part will during the life of this contract keep on hand and supply to its agents and to purchasers of said books all the books necessary for use in the schools of the State of Kansas.

Fifth. The State of Kansas shall not be liable to said party of the second part for any sum whatever, but it shall receive its pay and compensation solely and exclusively from the proceeds of the sale of said books.

Sixth. The life of this contract and the time during which it shall be in force and effect shall be five years from the date hereof.

In witness whereof, the party of the first part has caused this agreement to be executed in its behalf by the chairman and secretary of the State school text book commission, and said party of the second part has caused the same to be executed by Charles J. Barnes, who is duly authorized and empowered so to do.

AMERICAN BOOK COMPANY,
By CHAS. J. BARNES,
Managing Director,
Party of the Second Part.

FRANK NELSON, *Chairman,*
H. F. M. BEAR, *Secretary,*
Of the State School Text Book Commission,
For Party of the First Part.

47 EXHIBIT "D."

Know all men by these presents, that we, The American Book Company, a corporation organized under and by virtue of the laws of the State of New Jersey, as principal, and The American Bonding & Trust Company, as surety, are held and firmly bound unto the State of Kansas in the penal sum of twenty-three thousand, five hundred dollars, for the payment of which sum well and truly to be made we bind ourselves jointly and severally, together with our successors and assigns.

The condition of the foregoing obligation is such, that whereas, the said American Book Company was on the 7th, 14th and 16th days of May A. D., 1902, awarded by the school text book commission of the State of Kansas, contracts for furnishing to the schools of the State of Kansas, under provisions of chapter 179 of the Laws of 1897, as amended by chapter 31 of the Laws of 1898.

"Appleton's First Reader, ten cents each.
Appleton's Second Reader, seventeen cents each.
Appleton's Third Reader, twenty-three cents each.
Appleton's Fourth Reader, thirty cents each.
Appleton's Fifth Reader, forty cents each.
The Elementary Physiology (New Century series) fifty cents each.
The Natural Primary Geography (Kansas edition), thirty cents each.

The Natural Complete Geography (Kansas edition), seventy five cents each;"

and has entered into contracts with the State of Kansas obligating it so to furnish said books at said prices for the ensuing period of five years.

Now, therefore, if the said American Book Company shall well and faithfully abide by and perform the conditions and obligations of said contract, and shall in all things comply with the terms and provisions of the same, and with all the terms and provisions of said chapter 179 of the Laws of 1897 as amended by chapter 31 of the Laws of 1898, then this obligation shall be null and void; otherwise to be in full force and effect.

48 In witness whereof, the said American Book Company has caused this instrument to be executed by Charles J. Barnes its managing director, who is duly authorized so to do, and the surety has caused the same to be executed by its duly authorized officers and agents.

AMERICAN BOOK COMPANY, *Principal*,
By CHARLES J. BARNES, *Managing Director*.

[Seal American Bonding & Trust Co.]

THE AMERICAN BONDING & TRUST COMPANY OF BALTIMORE CITY, *Surety*,
By J. W. THURSTON, *Vice-President*.
Attest: JOHN V. ABRAHAMS, *Assistant Secretary*.

49 STATE OF KANSAS, } ss:
Shawnee County, }

On this 31st day of May, A. D. 1902, before me, the subscriber, a notary public in and for the county of Shawnee and State of Kansas, came J. W. Thurston, vice-president, and John V. Abrahams, assistant secretary, of the American Bonding and Trust Company of Baltimore City, in the State of Kansas, to me personally known to be the individuals described in and who executed the preceding instrument as vice president and assistant secretary, respectively, and they each duly acknowledged the execution of the same, and by me being duly sworn, severally and each for himself deposeth and saith that they are the vice-president and assistant secretary, respectively, of the company as aforesaid, for the State of Kansas, and that the seal affixed to the preceding instrument and their signatures as such vice-president and assistant secretary, respectively, were duly affixed and subscribed to the said instrument by the authority and under the direction of the said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

JENNIE C. ROSEN,
Notary Public.

My commission expires July 16, 1904.

50 (Endorsed on back:) No. 13,194. Supreme court State of Kansas *ex rel., vs.* American Book Company. Answer. Filed July 18 1902. D. A. Valentine, clerk sup. court Rossington, Smith & Histed, attorneys for defendants.

51 And afterwards, and on the 19th day of July, 1902, the plaintiff filed in said supreme court its motion to strike out certain portions of the defendant's answer, which said motion is in words and figures following:—

In the Supreme Court of the State of Kansas.

STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } No. 13194.

Motion.

Comes now the plaintiff and moves the court to strike out and expunge from the record all of the defendant's answer, except paragraph ten as follows, to wit: sections 2, 3, 3½, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and the exhibits thereto attached for the reason that said sections of its said answer are not responsive to the complaint of the plaintiff filed herein, are inconsistent with the only answer the complaint admits of, and in no wise do the same nor any of them constitute a justification of the right of defendant as against the plaintiff, and the same do not constitute a proper answer to plaintiff's complaint. And it will ever pray.

GALEN NICHOLS, *Co. Att'y,*
Att'ys for Plaintiff.

(Endorsed:) 13194.—The State of Kansas, *ex rel. vs.* The American Book Company—Motion—Filed Jul- 19, 1902, D. A. Valentine, clerk supreme court—

52 And afterward, and on the 19th day of July, 1902, the plaintiff filed its reply to the answer of defendant in the words and figures, following:

In the Supreme Court of the State of Kansas.

STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } No. 13194.

Reply.

Comes now the said plaintiff and for its reply to the answer of the defendant herein says:—

1. The plaintiff admits that the defendant is a corporation organized and existing under and by virtue of the laws of the State of New Jersey.

2. That it denies the allegations in paragraph or section ten of defendant's answer.

3. Wherefore and by reason of the same it demands judgment against defendant as prayed for in its petition.

GALEN NICHOLS, *Co. Att'y,*
Att'ys for Plaintiff.

(Endorsed:) 13194.—The State of Kansas *ex rel.* Co. Att'y Shawnee Co. *vs.* The American Book Company.—Reply—Filed Jul- 19 1902 D A. Valentine, clerk supreme court.—

53 And afterwards, to-wit, on Monday the 21st day of July, 1902, the same being one of the regular judicial days of the July 1902 term of the supreme court of the State of Kansas, court being in session at its court room in the city of Topeka, there being present the Honorable Frank Doster, chief justice; Honorable W. R. Smith and Honorable A. L. Greene, justices, the following proceeding was had and remains of record at page 169 of Journal "FF" of the said supreme court in words and figures following:

THE STATE OF KANSAS *ex Rel.*, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } 13194.

This cause comes on to be heard on the pleadings filed herein, and thereupon after oral argument by E. S. & A. B. Quinton for the plaintiff and by Cliff Histed and F. Dumont Smith for the defendant and after due consideration by the court, it is ordered that the defendant The American Book Company, be ousted from the exercise of the right to transact business as a corporation in the State of Kansas until its compliance with the statutes of this State providing for the making of an application to the charter board of the State to do such business, and the filing of a certified copy of its charter or articles of incorporation, and a statement of the matters and things required by section 2, of chapter 10 of the Special Laws of

1898 and the payment of the fees required by law; and it is further ordered that the prayer of plaintiff's petition asking for the annulment of the contract made by said defendant with the State text book commission be denied.

54 And on the same day to-wit: the 21st day of July, A. D. 1902 the said supreme court of Kansas handed down and filed in the office of the clerk of the said supreme court their written opinion in said action, which opinion is in words and figures following:

55 No. 13194.

Division Two, July, 1902.

Doster, C. J., Smith and Greene, JJ.

THE STATE OF KANSAS *ex Rel.* vs. THE AMERICAN BOOK COMPANY. } Original Proceeding in *Quo Warranto*. Writ Allowed.

Opinion per Curiam.

In this case the plaintiff seeks to oust the defendant from the prosecution of the business of selling and contracting for the sale of school books, and to annul a contract recently made by it with the State text book commission for supplying certain school books. The grounds of the application are, that the defendant, as a foreign corporation, has not complied with chapter ten of the Laws of the Special Session of 1898, and the amendatory statute of 1901, entitling it to do business in the State.

The company has complied, although irregularly, informally and out of time, with the law, except as to section two of chapter ten of the Laws of 1898. As to those particulars in which compliance has been attempted, but not technically executed, the statute is directory.

Section two, just mentioned, requires the making of an application to the charter board and the furnishing of certain information to such board. These things the company must do in order to acquire the status of a foreign corporation authorized to do business here. The statute requires the doing of these things by foreign corporations "seeking to do business in this State." Inasmuch as the defendant had been doing business in this State before the enactment of the law, it contends that it was not "seeking to do business" here. It contends that the words "seeking to do business"
56 apply only to corporations which had not theretofore done business, but desired to do it in the future. This is an erroneous view. The statute does not mean to thus discriminate in the requirements of section two above adverted to, and in other like matters, between foreign corporations which had theretofore been

doing business here, and those which might thereafter apply to do business.

The claim that because the defendant company is engaged in interstate trade it cannot be subjected to the regulations of the statute of 1898, is untenable. It may be that it cannot be excluded from doing interstate business here, but it can be laid under such reasonable conditions as the filing of its charter, the payment of charter-fees, the making of reports and furnishing of information concerning its business, the appointment of agents to receive service of process, etc. These are not burdens on the company; they are measures of justice and protection to the people of the State.

The plaintiff cannot, in this action, have an annulment of the contract already made. It may be that there are equitable circumstances forbidding the cancellation of such contract. It may be that compliance with the law by the defendant hereafter will retroactively validate the contract in the event it should now be invalid. However, independently of such consideration, we do not have jurisdiction over that branch of the case. Our jurisdiction is in *quo warranto* alone. A grant of that jurisdiction does not authorize the joinder to a cause of action for ouster of another one for the annulment of a contract, merely because the subject matter of the latter possesses incidental connection with the subject matter of the former.

The defendant will be ousted of its claimed rights to do business in this State until it complies with the requirements of the law, but the prayer of the petition for the annulment of the contract will be denied.

(Endorsed:) 13194. The State *ex rel.*, *vs.* The American Book Co., Original *quo warranto*. Opinion—*per curiam*. Judgment of ouster. Filed July 21 1902. D. A. Valentine, clerk supreme court.

57 And afterwards, to-wit, on the 2nd day of August A. D. 1902, the plaintiff in said action filed its motion for an order of citation issued to said defendant and H. L. Shirer and — Alfred, its agents, requiring them to show cause why they should not be held guilty of contempt, which said motion is in words and figures following, to wit:

58 In the Supreme Court of the State of Kansas.

STATE OF KANSAS on the Relation of GALEN NICHOLS, County Attorney of Shawnee County, Kansas, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
} No. 13194.

Motion.

Comes now Galen Nichols, county attorney of Shawnee county, attorney for the above named plaintiff, and informs the court that

the said defendant, The American Book Company, has shipped into the city of Topeka to the Kansas Book Company, and to its agents, H. L. Shirer and — Alfred, a car load or more of books, intended for sale and distribution in the State of Kansas, which said car load of books was received by said Alfred and Shirer in the city of Topeka on the 31st day of July, 1902, which said shipment of books, receipt and care for the same by the said Alfred and Shirer is in direct violation of the order of ouster issued against the said defendant by this honorable court on the 11 day of July 1902, said defendant not having complied with the order of said court of July 21, 1902 and is in contempt of said court. He therefore, asks that a citation issue from this court to said defendant, The American Book Company and to Alfred and Shirer, requiring them to show cause why they should not be held guilty of contempt.

GALEN NICHOLS,
County Attorney.

(Endorsed:) 8/2/02 Citation may issue returnable on Sept. 16th, 1902. W. A. J. 13,194. State *vs.* Am. Book Co. Motion for citation. Filed—Aug. 2—1902—D. A. Valentine clerk supreme court—

59 Be it remembered, that on Saturday, August 2nd, before Hon. William A. Johnston, justice of the supreme court of the State of Kansas at his chambers in the city of Topeka, the following proceeding was had and remains of record at page 185 of Journal "FF" of this court and is in words and figures following, to-wit:

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
} No. 13194.

Now comes Galen Nichols, county attorney of Shawnee county, on whose relation this cause was brought, and informs the court that said defendant herein, The American Book Company has shipped into the city of Topeka and to the Kansas Book Company and its agents H. L. Shirer and —— Alfred, a car load or more of books, and that the same are intended for sale and distribution in the State of Kansas, and are now in the care, custody and control of said —— Alfred and H. L. Shirer, as agents; and also presents his written motion for an order of this court for the issuance of a citation to the said defendant, The American Book Company and to —— Alfred and H. L. Shirer its agents, requiring them to appear and show cause why they should not be held guilty of contempt of a certain judgment of ouster heretofore rendered against them by this court on the 11th day of July 1902. And thereupon after due consideration and for good cause shown, it is *ordered* that the motion for an order for issuance of a citation for contempt be allowed and the clerk

is hereby ordered to issue under his hand and seal a citation to the defendant, The American Book Company and to —— Alfred and H. L. Shirer their agents, requiring them to appear on the 16th day of September, A. D. 1902 and show cause why they are not guilty of contempt of the judgment of this court.

60 And thereupon, on the said 2nd day of August, 1902 pursuant to the above and foregoing order a citation was issued to —— Alfred and H. L. Shirer out of the said supreme court of Kansas and returned to said court on the 4th day of August, 1902 which said citation with the return of the secretary of state and all endorsements thereon is in words and figures following, to-wit:

61 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Kansas, Plaintiff.
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant.
} No. 13194.

Citation.

To Geo. A. Clark, secretary of state, Greeting:

You are hereby commanded to notify —— Alfred and H. L. Shirer, agents of The American Book Company, defendant above, that an order has been entered in the above entitled cause, on this date, by Hon. W. A. Johnston, one of the justices of this court, citing —— Alfred and H. L. Shirer to appear and show cause why they are not in contempt of the orders of said court as shown by the motion on file, on September 16th, 1902 at 9 o'clock a. m. Hereof fail not under penalty of the law.

[SEAL.] Witness my hand and the seal of the supreme court of Kansas, hereto affixed at my office in Topeka, this 2nd day of August, 1902.

D. A. VALENTINE,
Clerk Supreme Court,
By H. L. ARMSTRONG, *Deputy.*

STATE OF KANSAS,
Executive Department.

OFFICE OF THE SECRETARY OF STATE.

I received the within writ August 2nd, 1902, and I hereby certify that on the 4th day of August, 1902, I made service of the same on the within named —— Alfred and the within named H. L. Shirer in Shawnee county Kansas by transmitting to each of said persons a true copy of the within writ with all of the indorsements thereon

duly certified; the same being transmitted from my office to the office of said persons by messenger.

[SEAL.] Witness my hand and official seal this 4th day of August, A. D. 1902.

GEO. A. CLARK,
Sec'y of State.

(Endorsed:) No. 13,194. Supreme court of Kansas. State *ex rel.* pl'ff *vs.* The American Book Company. def't. Citation. Issued Aug. 2, 1902. Returnable according to law. Filed August 4 1902. D. A. Valentine clerk supreme court. Original.

62 And thereupon, and on the same day, to-wit, the 2nd day of August A. D. 1902 a citation was issued to the American Book Company, in words and figures as follows:

63 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Kansas, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 13194.

Citation.

To Geo. A. Clark, secretary of state, Greeting:

You are hereby commanded to notify The American Book Company, defendant, that an order has been entered in the above entitled cause, on this date, by Hon. W. A. Johnston, one of the justices of this court, citing said American Book Company to appear and show cause why it is not in contempt of the order of said court as shown by the motion on file, on September 16th, 1902, at 9 o'clock, a. m. Hereof fail not under penalty of the law.

Witness my hand and the seal of the supreme court of Kansas, hereto affixed at my office in Topeka, this 2nd day of August, 1902.

[SEAL.] D. A. VALENTINE,
Clerk Supreme Court,
By H. L. ARMSTRONG, *Deputy.*

STATE OF KANSAS, }
Executive Department. }

OFFICE OF THE SECRETARY OF STATE.

I, Geo. A. Clark, secretary of state of the State of Kansas, do hereby certify that I received the within writ on the 2nd day of August 1902, and that on the 4th day of August, 1902, I served the same on the within named defendant, The American Book Com-

pany, by transmitting by registered mail to the secretary of said defendant at New York city, N. Y. a true copy of the within writ with all of the indorsements thereon duly certified.

Witness my hand and official seal this 4th day of August, A. D. 1902.

[SEAL.] GEO. A. CLARK,
Sec'y of State.

(Endorsed:) 13194. Supreme court of Kansas. State *ex rel.*, pl'ff, *vs.* The American Book Co. def't. Citation. Issued Aug. 2, 1902. Returnable according to law. Original. Filed Aug. 4, 1902 D. A. Valentine clerk supreme court.

64 And afterwards to-wit, on the 6th day of August 1902 the defendant in the above entitled action filed in the office of the clerk of said supreme court and made a part of the record herein a bill of exceptions which, with the endorsements thereon is in words and figures following, to-wit:

65 13194.

Filed Aug. 6, 1902. D. A. Valentine, Clerk Supreme Court.

Be it remembered, that on Monday, the twenty-first day of July, 1902, the same being one of the judicial days of the regular July 1902 term of the supreme court of the State of Kansas, the above entitled cause came regularly on for trial upon the issues theretofore therein joined, before the second division of said supreme court, Doster, C. J., and Smith and Greene, JJ., presiding.

The plaintiff appeared by Mr. Galen Nichols, county attorney of Shawnee county, and Messrs. A. B. Quinton and E. S. Quinton.

The defendant appeared by Mr. Charles Blood Smith, Mr. Clifford Histed, Mr. F. Dumont Smith, Mr. A. M. Harvey and Mr. H. G. Larimer.

And thereupon the following proceedings were had:

Mr. E. S. Quinton stated the cause of the plaintiff to the court.

66 Mr. QUINTON: It is our contention that the burden of proof in this case is upon the defendant.

Mr. HISTED: We don't see it that way. We insist that the burden is not upon us, but is upon the State.

Chief Justice DOSTER: We decided some time ago, in a case where a physician was prosecuted for practicing medicine without a license, or authority issued by the State medical board, that it was incumbent upon him to produce the evidence of his authority to practice. That was under the general rule that where one claimed a license or permit to do business, he being in possession of the evidence of it, was better able to produce it. It does not come under the ordinary rule. You claim that you were authorized to do business in this

State. It is probable that some paper evidence of that authority to do business is issued by the secretary of state. At any rate, whether a license or permit is issued, the evidence of your right to do business is practically within your knowledge more than that of the other party. So far as that one point is concerned, the burden is on the defendant.

Mr. HISTED: The defendant desires to take exception to that ruling of the court because it is a denial to the defendant of the equal protection of the laws and a denial to the defendant of due process of law within the meaning of the fourteenth amendment to the Constitution of the United States.

Mr. QUINTON: We have filed a motion to strike out portions of their answer and should like a ruling on that before we proceed any further.

Chief Justice DOSTER: For the purpose of shortening the work of the case and without passing on the merits of the motion that has been filed, we have concluded that that motion may be overruled; so if you have an issue of fact to raise against the part of the
67 answer to which this motion was filed, you would better amend your reply, or if you wish to stand on your general denial already in as applicable to that part of the answer, you can do so.

Mr. QUINTON: That is what we wish to do. We also wish to take exceptions to the ruling of the court.

Chief Justice DOSTER: We understand that on their side, they apply their general denial they already have in to the whole of the answer. Just now it may be treated as amended. Let me say this, gentlemen, that so far as one question that the defense in this case wishes to raise is concerned, the court is ready to pass on it and it may be passed on for the purpose of shortening the work of the case. Whether this corporation is engaged in interstate commerce or not, or, rather, assuming it to be engaged is what is called interstate commerce business, we shall hold that it is subject to reasonable legislation and regulation. That is the law. That is the decision of the Federal courts. While a corporation is engaged in interstate commerce and may not be excluded wholly from the State—must be allowed to do business in the State—that is, interstate business—yet all the holdings are that it is subject to reasonable regulation.

Mr. HISTED: Your honor's suggestions leave me in some doubt as to the course of proceedure, whether or not the court decides at this time that the answer as pleaded in paragraph 3, constitutes no defense. I take it that that is what the court has decided, and that no evidence will be permitted on that point.

Chief — DOSTER: If you mean by that to interpose the objection that you are engaged in interstate trade and therefore are not subject to regulations of this Bush act, then you are correct—it is no defense.

Mr. HISTED: The requirements of the Bush act are various, as applied even to foreign corporations, and of course, with the
68 general statement which your honor makes of the view of the law, it may or may not be applicable to this defense.

Chief Justice DOSTER: The State in this case makes three claims. One is that you were required to apply for permission to do business, refiling your New Jersey charter or something like that, and on doing that you could obtain a permit to transact business here. Another is that you were required to file reports of your business; and another is that you were required to file an irrevocable power of attorney, appointing some person upon whom service can be made; and that you did not do any one of those things, and for that reason that you should be ousted.

Mr. HISTED: There is also the other requirement which I suppose your honor included within the first; that is, that we shall pay a certain fee, conditioned on the amount of the charter. I suppose the court also holds that that is incumbent upon the company.

Chief Justice DOSTER: We had not heard that matter discussed.

Mr. HISTED: The only time they have to file a charter is when they are corporations that did not or were not doing business in Kansas prior to 1898.

Chief Justice DOSTER: Does the law hold the same requirement as to domestic corporations?

Mr. HISTED: Yes sir.

Chief Justice DOSTER: I do not see why that may not be valid legislation. It makes no discrimination between domestic and foreign corporations in that particular.

Mr. HISTED: I am only attempting to find out exactly the view of the court, so as to meet that view.

Chief Justice DOSTER: That is my particular view. The
69 other justices have the same view I expressed. There is no attempt by that act to discriminate as to foreign corporations.

Mr. HISTED: To get this question so we will understand it, do I understand the court would sustain an objection to any evidence offered under paragraph 3 of this answer?

Chief Justice DOSTER: Yes sir.

Mr. HISTED: To which ruling of the court the defendant objects and excepts, because the business of the defendant is within the protection of section 8 of article 1 of the Constitution of the United States, as pleaded.

Mr. HISTED: The next defense is a legal defense which I take it the court will sustain on the same line. This defense refers to the other and refers to those contracts which were made prior to the passage of the Bush act and some of which are still in force, those contracts being, as your honors will remember from my statement, contracts regulating the price at which this American Book Company would sell its publications to various people, school districts, etc., contracts which we contend are merely incidental to its interstate commerce. The contention of the defendant in paragraph 3½ briefly is that in so far as the court puts a construction upon the law of 1898 as authorizing this court, under that law, to oust the company from doing business within the State of Kansas, it is a law impair-

ing the obligation of a contract, and therefore is violative of section 10 of article 1 of the Constitution.

Chief Justice DOSTER: You took contracts extending over a term of years which have not yet fully expired?

Mr. HISTED: Yes sir.

Mr. QUINTON: Are those pleaded here?

Mr. HISTED: Yes sir.

Chief Justice DOSTER: And you are asked to be ousted from your franchise to fulfill those contracts as well as other business?

70 Mr. HISTED: Yes sir.

Justice SMITH: Do you think this would have the effect you state if you were ousted?

Mr. HISTED: The judgment asked by the plaintiff is absolute prohibition to this company from coming into the State of Kansas and doing any business in the State of Kansas.

Mr. QUINTON: We do not complain of any contract made by this company prior to the passage of the Bush law. We complain only that they failed to comply with the Bush act and by reason of that failure they have no right to do business. Of course, if they had contracts in the State before that law was passed, there is nothing in this proceeding that can touch those, and if the court would overrule that part of their defense, it would simply inject into this case something that is not contemplated.

Chief Justice DOSTER: You don't ask that the company be ousted from its franchise to fulfill the old contracts?

Mr. QUINTON: No sir, we do not. We simply complain of their right to do business under this act. That is another matter. The court cannot determine what contracts it affects now and what it don't affect.

Mr. HISTED: Have we a right in trying this case to adopt the same rules of proceedure and evidence that would obtain in a district court and to interpret the position of the party by his pleadings and the orders obtained, and has he a right to come in and interpret them on the trial?

Chief Justice DOSTER: Where a party disavows an intention to ask certain relief, the court will act upon his disavowal. They disavow any intention to oust you from the fulfillment of those old contracts. We will bear that in mind when we come to render judgment, in case it should be adverse to you in any particular.

Mr. HISTED: The injunction is as broad as the prayer of the petition.

71 Chief Justice DOSTER: I am by no means clear that you are protected as to those old contracts, but we will bear that in mind when we come to render judgment. We think you would better proceed to offer your evidence, Mr. Histed, to show your authority to transact business in this State.

Mr. HISTED: We have some other defenses here. I do not see how we can intelligently try the case unless the court knows the issues.

Chief Justice DOSTER: They only object to you because you have

no authority to transact business. Whatever defense you may have outside of this it seems to us unnecessary to present. Show us now that you have complied with the requirements of our statute and have authority to transact business. If you have, that is the end of the case. You don't have to go to your other defenses.

Mr. HISTED: If the court does not care to hear the rest of the defenses, I will not press them.

Chief Justice DOSTER: We may after a while.

Mr. HISTED: I might say to your honors that we have no frivolous plea here. We have not attempted to inject into this case matters which we think are not matters well taken, and we expected to invite your honors' attention to our case—not our case in part, but the whole case—before your honors determined our rights.

Chief Justice DOSTER: If you are unable to sustain your rights to do business here because you have not complied with the law, and you think then that over and beyond that you have some defense, we will hear it; but for the present, go to this question.

72 F. DUMONT SMITH, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination.

Questions by Mr. HISTED:

Mr. HISTED: I desire to offer in evidence a receipt, signed by the secretary of state, on May 12, 1902, and another one dated May 31, 1902.

Mr. QUINTON: The receipts are from Mr. Clark, secretary of state. We object to them as incompetent, irrelevant, immaterial, and not the best evidence. This is a receipt to Mr. Harvey for a filing with the secretary of state of a power of attorney. The power of attorney itself is the best evidence. The second paper offered is a receipt for a statement filed by the defendant company on May 31, 1902. That is not the best evidence, and is incompetent, irrelevant and immaterial; the statement itself is the best evidence.

Chief Justice DOSTER: If that paper is in the nature of a license or permit, such as issued by many officers, to do certain things, that is admissible evidence; but if it is a mere receipt, it would seem that the paper for which it is a receipt is the best evidence. Is there any reason why you might not produce the paper filed with the secretary of state?

Mr. HISTED: No sir.

Chief Justice DOSTER: There seems to be a disposition to be technical in this case, and not merely that, but to consume time. We won't permit that. We want you to go direct to the merits of the case. Bring up that evidence which you as lawyers recognize as admissible and proper, and offer it to the court.

73 Mr. HISTED: We offer this document in evidence.

Chief Justice DOSTER: We will receive it. We will receive

that, and if you think that the paper on file in the secretary's office ought to be offered, we will receive that. If there is any doubt about it, you would better offer it.

Mr. HISTED: We will offer it in deference to your honor's suggestion.

Said two papers offered in evidence were marked for identification as Exhibits 1 and 2 respectively, and are in words and figures as follows, to-wit:

Duplicate.

"STATE OF KANSAS,
Executive Department.

— SECRETARY OF STATE,
TOPEKA, *May 31st*, 1902.

I, George A. Clark, secretary of state, do hereby certify that the annual report of the American Book Company, of New York City, for the year ending May 30, 1902, has been made, as required by the laws of the State of Kansas relating to corporations, and is on file in this office.

[SEAL.]

GEO. A. CLARK,
Secretary of State,
By A. J. WHITMORE,
Chief Clerk."

"STATE OF KANSAS,
Executive Department.

OFFICE OF SECRETARY OF STATE,
TOPEKA, KANSAS, *May 12th*, 1902.

Received of A. M. Harvey resolution of the board of directors and the consent to accept service of process from the secretary of state of the State of Kansas, "The American Book Company," a corporation, whose principal office is at Newark, New Jersey. Such papers were filed in the office of the secretary of state on May 5th, 1902.

GEO. A. CLARK,
Secretary of State,
Per A. J. WHITMORE,
Chief Clerk."

74 Q. Mr. Smith, in the spring of 1902, did you have any connection with the American Book Company?

A. Yes sir, I was attorney for the company at that time.

Q. With what business of the company?

A. In connection with the making of bids for the text book commission, the preparation of bids, making the contracts, and looking after the details.

Q. In reference to that employment, did you have any conversation with or statements from or interview with any of the executive departments of the State, and if so, with whom?

A. Yes sir, with the attorney general, State superintendent, who was *ex officio* chairman of the text book commission, the secretary of the commission, and with members of the charter board at different times.

Q. When did you have your first interview, and with whom?

A. I think the first interview was about the first or second of May. I went into the secretary of state's office to look into the question of whether it was necessary for the company——

Mr. QUINTON: I object to that; it is not an answer to the question.

Mr. HISTED: This leads to the interpretation put upon the law. It is a defense your honor did not hear in this connection. It is a question of good faith on the part of this corporation and what they did and why they did it.

Chief Justice DOSTER: Are you going to claim you were misled by an opinion of the attorney general or some of his assistants?

Mr. HISTED: Certainly we will. We don't think we were misled. We say there has been a practical interpretation put upon this law and that we followed that interpretation and brought ourselves clearly within the terms of that statute, and that it would be an act of bad faith for the State now to put a different interpretation upon that law.

Mr. QUINTON: They did not apply to the attorney general
75 or to the charter board until four years after this law was passed. I don't think they showed much good faith in that respect. Even if they had, I don't think it would be binding upon us.

Chief Justice DOSTER: It seems somewhat questionable to us, gentlemen, but perhaps, inasmuch as the right of ouster is discretionary with the court, it may advise the court in the exercise of that discretion that one has been misled by the officers. We will hear you. Be brief, however.

Mr. QUINTON: We except to the ruling of the court.

The WITNESS: I went first to the secretary of state's office and was there referred to the attorney general, and on the same day I had an interview with the attorney general regarding the matter of the requirements that would be made for the company's bidding before the text book commission. He informed me that as he construed the Bush law, a company that had been doing business in the State at the time of the enactment of that law could come in by filing at any time its irrevocable consent to be sued and making the proper report contemplated in the statute; that as he regarded the law, time was not of the essence of it; that the purpose of the law was simply to see that the corporation was not insolvent. He said, however, that that requirement would not be made at the time the bids were made to the text book commission—in other words, that foreign corporations that had not complied with the law would be allowed to bid and their bids would be received and considered the same as those that were residents of the State; but he suggested that we should comply with the law so far as the filing of our consent to be

sued, for the reason that there were certain penalties and obligations accruing to the bidder failing to make the contract which the bid called for, which would be difficult of enforcement unless the corporation were in the State so it could be sued here. He also
76 stated to me that up until that time no non-resident corporation bidding or receiving contracts from the text book commission had been required to comply with the law, and only one of them had done so. He said further that his interpretation, as I have outlined it, had been followed by the charter board all the way through, and that a number of corporations had come in and been admitted to do business, filing their consent and report after the time apparently fixed by the statute; that that had been the universal custom and there had been no exception to that custom in the practice of the charter board.

Q. Was that before any bidding had been made by the American Book Company?

A. Yes sir.

Q. What is the next thing you did with reference to this question with any of the executive departments?

A. We filed the irrevocable consent, shown by that certificate, and received the receipt——

Mr. QUINTON: We object to that as incompetent, irrelevant, immaterial and not the best evidence.

The WITNESS: After the bids were accepted and while the matter of the contract was pending, Mr. Nelson, the chairman of the commission, stated to me it would be necessary for us to fully comply with the law before any contracts would be signed, and referred me to the attorney general. I went to the attorney general and he stated to me that his department had ruled that no contracts would be signed with non-resident corporations that had not complied with the Bush law so far as filing its consent to be sued and filing its report, on the theory that any corporation that had been doing business was in the same situation we were. I asked him then if that was all that would be required of the American Book Company as a condition precedent to the securing of its contracts, whether any other or further requirements would be made of them, or whether this would fully satisfy the law as interpreted by him and according to the custom of the executive departments that had the mat-
77 ter in charge, and he said that was all that was necessary under the law and no other or further requirements would be made of us, and if we at that time filed our annual report, he would prepare the contracts and advise the president and secretary of the text book commission to execute them. We then filed the report, of which the certificate has been offered in evidence. Contracts were prepared by the attorney general and executed in duplicate by both parties and received by us. We prepared and filed our bond and that was approved by the executive council.

Mr. QUINTON: I move to strike out the latter portion of the answer of the witness as incompetent, irrelevant and immaterial.

Q. Now, with reference to any inquiry as to the status of this defendant corporation as being one engaged in business prior to the Bush act, what if anything was done?

A. On or about the 30th or 31st day of May, at the time this report was filed, the charter board was convened. The attorney general had required of us—said to me he should require of us some evidence of the fact that we were doing business within the State of Kansas at the time the Bush law was enacted, and the character and extent of that business, so as to know whether the American Book Company was within the purview of that act and could come in under those provisions. I furnished an affidavit showing the character and extent of our business at and prior to the passage of that law and since that time. The charter board was reconvened and the affidavit was submitted to them in my presence, and the charter board considered it and directed the secretary of state to issue this certificate. I cannot say what action was taken by the board as a body as recorded, but the different members expressed themselves as satisfied with the showing, and directed the secretary to issue that certificate. All this was done prior to the execution of those contracts and the tendering and approval of the bond set forth in our answer. Following that, the contracts were made and the bond supplied.

78 Q. State, as representing the American Book Company, if you relied upon the interpretation placed upon the law by the attorney general and the other departments of the Government, as you have narrated them?

A. Entirely.

Q. Did you have any purpose or disposition to evade any provision of the corporation act?

A. No sir, our purpose was to comply with every requirement that the department made of us. I had expected that we might have to come in under the other provisions of the law, because I was not aware of what the ruling of the department had been. My purpose—we were prepared at any time to do that if the department had required that. My purpose in going to the department as often and consulting with them as fully as I did was that we might satisfy every requirement of the laws of Kansas with reference to these contracts.

Q. As I understand, the attorney general interpreted that law and held that the period of time within which reports might be filed, as provided in the statute, was directory and not mandatory?

A. Yes sir.

Q. And he held that the other requirements, as to filing a charter and paying the fees, did not apply to corporations engaged in business before the act was passed?

A. With reference to the matter of time, he said to me that his interpretation of the law was—the purpose of this act so far as it applied to non-resident corporations was to insure that corporations coming into the State and doing business and undertaking obligations were solvent and able to fulfill their obligations, and that their

consent to be sued was good at any time, and a contract filed beyond the time specified by the statute complied with the spirit of the law.

79 Cross-examination.

Questions by Mr. QUINTON:

Q. When did you have this conversation you are speaking of?

A. The first conversation with the attorney general was in the first days of May, within a day or two of the meeting of the commission.

Q. What year?

A. 1902.

Q. You made a statement and affidavit that you had been doing business in this State for ten years prior to that time. Is it not a fact that the claim you made was that you had been doing business in the past and therefore claimed the right to still do business?

A. I don't know as to that. The affidavit would show.

(Witness excused.)

LOUIS M. DILLMAN, of lawful age, called as a witness on behalf of the defendant, being first duly sworn, testified as follows.

Direct-examination.

Questions by Mr. HISTED:

Q. State your connection with the American Book Company.

A. I am one of the directors of the company, and assistant managing director of the Chicago office.

80 Q. State whether your corporation, in entering into this contract with the State text book commission, had any purpose or disposition to evade any of the corporation laws of the State of Kansas?

Mr. QUINTON: We object to that as incompetent, irrelevant and immaterial.

A. None whatever. On the contrary, we were very anxious to find out every requirement that they would make of us and were only too willing to comply with them to the best of our ability, once we found out what they desired.

Q. Did you as an officer of the corporation learn of the interpretation which had been placed upon the law and the duties of your company, as has been detailed by Mr. Smith?

A. Yes sir.

Q. State whether or not the company relied upon that interpretation?

A. We did, wholly so. It was our instruction to our attorney to find out any and all requirements that would be made of us, and then we would comply with them, and we were informed right along as to the procedure and we always had the caution to go to

the other extreme of covering everything so there would not be any possibility of any objections being made. We had reasons for that.

Q. Mr. Smith acted as attorney for the American Book Company, did he?

A. Yes sir.

Q. Acting upon the contracts of the commission, which have been set out here, state what, if anything, this defendant has done in the way of preparing for the performance of its contracts?

Mr. QUINTON: We object to that as incompetent, irrelevant and immaterial.

A. Upon the contracts being executed, as these books prepared for Kansas were largely special editions—that is, the commission had made certain requirements of us as to additions, etc., and changes in the books, which we complied with—it was necessary for us to make special editions; that is, the books we would sell in other States we could not sell here because of these changes the commission required in the text and which required a resetting, largely, of all of them, new plates being made and, of course, binding this edition particularly for this State. The time being short we went to work at once and got our plates ready and got everything ready so we might have the books all here when the schools should open. I should think, as near as my information goes—as that work is done at our general office in New York—I should think that half the process or more is fully completed now; the plates are all made. They are in process of printing now, which has been held up of course, being informed of this proceeding. Just making a rough estimate, I should think we have already gone to an expense of from twenty to fifty thousand dollars to comply with this contract—certainly twenty thousand dollars would be the minimum; I would put it nearly fifty thousand dollars. I don't know but what I would put it at more than that. Of course, it is just an estimate.

81

Q. Are these books available for other purposes or other States?

A. They are not, for the reasons I have stated. The commission appointed a committee, after they adopted these books, to make suggestions as to certain changes, so therefore the books we would sell here we could not put into our general trade, because they would be a different edition. No, it would be a total loss to us.

Q. Prior to the act of 1898, Mr. Dillman, did the company have any contracts with municipalities in Kansas?

A. Oh, yes, probably——

Chief Justice DOSTER: That is conceded, as I understand.

Mr. QUINTON: Yes sir.

Q. Are those still in force?—or is that conceded, too?

Chief Justice DOSTER: It is proper to state if you have them they are not affected.

82 Cross-examination.

Questions by Mr. QUINTON:

Q. This is the first report filed, in May 1902, that has ever been filed by the company in this State, is it not?

A. I don't know what that is.

Q. It is the report you filed.

A. I don't know what you have in your hand.

Q. You say when you made a bid for those contracts, you were very anxious to do everything the law compelled you to do, and you filed a report of your business that the law requires. Is that correct?

A. Yes, we did file a report.

Q. That is the first one you ever filed?

A. Yes, so far as I can remember or so far as I know.

Q. You say your attorney instructed you or advised you to go to the other extreme so as to comply with the laws of Kansas in 1902, at this time?

A. Yes.

Q. In making out that report, why did you leave out the requirements of the law as to the residences and names and number of shares of stock of your stockholders?

A. I don't know but what they are in. I haven't seen that report.

Q. You never filed a power of attorney, irrevocable, under this law of 1898, until 1902, did you?

A. I think not.

Q. You never complied with it in any respect until 1902?

A. No, I think not.

Q. You were right along through these four years and have been for the last ten years doing business in the State, and right along making contracts?

A. No, we haven't been doing that right along.

Q. You have been doing that some of the time?

A. Because the last five years there has been a contract covering the text books in Kansas.

Q. Haven't you been doing business as you have sworn in
83 that affidavit during this time?

A. Oh, yes.

Q. Haven't you made contracts?

A. With whom?

Q. It doesn't make any difference whom—in the State of Kansas since 1898.

Mr. HISTED: That is not in issue.

Chief Justice DOSTER: Suppose it has made contracts—what then?

Mr. QUINTON: That's all; I just wanted to show they were doing business.

The WITNESS: I thought I stated fully——

Chief Justice DOSTER: Never mind; the question is withdrawn.

Mr. HISTED: I offer to show by this witness that the character of the business of this defendant, at the time this suit was brought and now and ever since the Bush act was passed, was solely that of interstate commerce.

Mr. QUINTON: We object to that as not proper under the rulings.

Mr. Chief Justice DOSTER: Your pleadings set that up. The court ruled on that before, and refused to allow you to show that, and we still hold to that ruling.

Mr. HISTED: To which ruling the defendant excepts.

Mr. HISTED: I now offer in evidence a certified copy of the resolution of the board of directors authorizing service upon the secretary of state, the resolution being dated April 30, 1902.

Said document is in words and figures as follows, to-wit:

"STATE OF KANSAS:

OFFICE OF THE SECRETARY OF STATE.

I, George A. Clark, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the resolution of the board of directors of the American Book Company, authorizing the written consent thereof to be sued in the State of Kansas in accordance with the laws of such State, filed in this office for record on the 5th day of May, A. D. 1902.

84 In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, this 2nd day of June, 1902.

GEO. A. CLARK,
Secretary of State.

[SEAL.]

Resolution by the American Book Company of New Jersey.

30TH APRIL, 1902.

At a meeting of the directors of the American Book Company, duly held at the office of said company, on the 30th day of April, 1902, Mr. —— —— offered the following resolution, and moved its adoption:

Resolved, That the president and secretary of this company be and they are hereby authorized and instructed to execute the written consent thereof to be sued in the State of Kansas, in the manner provided in section 3 of an act of the legislature of the State of Kansas, concerning private corporations, approved January 7, 1899.

The resolution was adopted.

STATE OF NEW YORK, } ss:
County of New York, }

Gilman H. Tucker, being duly sworn, says he is secretary of the American Book Company of New Jersey, and that the foregoing is a true and correct copy of a resolution adopted by the board of direct-

ors of said American Book Company, on the 30th day of April, 1902, together with the minutes concerning said resolution.

GILMAN H. TUCKER, *Secretary.*

Sworn to and subscribed before me this 30th day of April, 1902.

W. L. BILLMYER,

[SEAL.] *Notary Public, Kings Co.*

My commission expires March 30, 1904. Cert. filed in N. Y. Co., No. 75."

85 Mr. HISTED: I now offer in evidence certified copy of the power of attorney, dated the 30th day of April, 1902. Said document is in words and figures as follows, to-wit:

"STATE OF KANSAS:

OFFICE OF THE SECRETARY OF STATE.

I, Geo. A. Clark, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the written consent of the board of directors of the American Book Company that action against such corporation may be had by service of process on the secretary of state of the State of Kansas in the proper court of any county, filed in this office for record on the 5th day of May, A. D. 1902.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 2nd day of June, 1902.

GEO. A. CLARK,

[SEAL.] *Secretary of State.*

Know all men by these presents: That the American Book Company, a corporation organized under the laws of the State of New Jersey, and with its principal office at Jersey City, in said State, hereby consents, without power of revocation, that actions may be commenced against it, the said American Book Company, in the proper court of any county in the State of Kansas in which a cause of action against such corporation may arise, or may have heretofore arisen, or in which plaintiff may reside, by service of process on the secretary of state of the State of Kansas; and the said corporation stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or any other chief officer of said corporation.

In witness whereof, said corporation has caused these pres-
86 ents to be executed by its president and its secretary and authenticated by its corporate seal, at New York, in State of New York, this 30th day of April, A. D. 1902.

[SEAL.] H. T. AMBROSE, *President.*

Attest: GILMAN H. TUCKER, *Secretary.*"

Mr. HISTED: I now offer in evidence certified copy of the report filed by the defendant in the office of the secretary of state on the 31st day of May, 1902.

Said document is in words and figures as follows, to-wit:

"STATE OF KANSAS:

OFFICE OF THE SECRETARY OF STATE.

I, Geo. A. Clark, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the annual statement of "The American Book Company," filed in this office for record on the 31st day of May, A. D. 1902.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 2nd day of June, 1902.

GEO. A. CLARK,
Secretary of State.

[SEAL.]

Annual Statement of the American Book Company, Incorporated under Laws of State of New Jersey, Located at New York City, New York, for the Year Ending May 30, 1902.

87 Capital stock.

Authorized capital, $5,000,000. Par value per share, $100.00.
Paid-up capital, $5,000,000. Market value per share, $115 to $130.

Statement of the Condition of the Company June 30, 190–.

Resources:	Dollars.	Cts.
Bills receivable	70,000.	
Real estate		
Personal property	3,250,000	
Stocks, bonds, and other securities	250,000	
Merchandise	2,000,000	
Cash on hand	75,750	
Due from banks		
Accounts receivable	404,250	
Judgments		
Total	$6,050,000	

Liabilities:	Dollars.	Cts.
Capital paid up	5,000,000	
Surplus		
Undivided profits		
Bills payable		
Accounts payable	150,000	
Bonded indebtedness	900,000	
Encumbrances on real estate or plant		
Bills rediscounted		
Total	$6,050,000	

Trustees and Directors.

Name.	Address.
H. G. Ambrose	New York city
Alfred C. Barnes	New York city
Henry B. Barnes	New York city
88 H. H. Vail	New York city
Henry Ivison	New York city
A. H. Hinkle	Cincinnati
W. B. Thalheimer	Cincinnati
Chas. P. Batt	New York city
J. M. Greene	New York city
Gilman H. Tucker	New York city
Charles J. Barnes	Chicago
L. M. Dillman	Chicago

Officers of the Corporation.

President, H. T. Ambrose.
Vice-president, Alfred C. Ambrose.
Second-Vice-president: —— ——.
Treasurer, Charles P. Batt.
Secretary, Gilman H. Tucker.
Managing director, Chas. J. Barnes.

List of Stockholders

And number of shares of stock owned by each.

Name.	Address.	No. shares.
H. T. Ambrose	New York	4,000
Henry B. Barnes	"	4,000
Alfred C. Barnes	"	3,500
H. H. Vail	"	3,500
A. H. Hinkle	Cincinnati	3,000
Richard H. Barnes	New York	1,500
L. M. Dillman	Chicago	250
Chas. E. Lane	"	250
J. M. Greene	New York	350
Chas. P. Batt	"	200
Gilman H. Tucker	"	200
W. B. Thalheimer	Cincinnati	1,000
Edwin M. Barnes	New York	1,500

89 The other stockholders being too numerous to mention, but owning small holdings and located in various parts of the United States; none of whom, however, reside in Kansas.

STATE OF KANSAS, } ss:
Shawnee County, }

We, Chas. J. Barnes, managing director of the above-named corporation, do solemnly swear that the above is a full and complete statement of the condition of the capital stock of this corporation on the 30th day of May, 1902, and of the resources and liabilities thereof on that day, to the best of his knowledge and belief. Also, that the above is a partial list of the stockholders of this corporation, and shows the post-office address and the number of shares of stock of this corporation held by each, as well as a list of the trustees or directors thereof, and the officers elected and appointed for the ensuing year, and that such election was held on the 18th day of March, 1902, and was conducted in conformity with the by-laws of the corporation.

CHARLES J. BARNES,
Managing Director.

Subscribed and sworn to before me, this 31st day of May, 1902.

A. M. HARVEY,
[SEAL.] *Notary Public.*

My commission expires Sept. 12, 1905.
Fee for filing this report (one dollar) herewith enclosed."

Mr. QUINTON: We desire to object to the legal sufficiency of the report.

Mr. HISTED: Upon the question going to show the interpretation placed upon this law, I also offer a contract made by the text book commission with the American Book Company on the 22nd day of September, 1899, signed by Mr. Frank Nelson as chairman and Mr. W. J. Hurd as secretary.

90 Mr. QUINTON: We object to that as incompetent, irrelevant and immaterial.

Chief Justice DOSTER: We will have to look at that, too.

Said document is in words and figures as follows, to-wit:

"*Contract.*

This agreement, made and entered into this 22nd day of September, A. D. 1899, by and between American Book Company, of Chicago, Illinois, party of the first part, and the School Text Book Commission of the State of Kansas, party of the second part,

Witnesseth, that whereas, the said party of the first part has submitted to the party of the second part its proposition to supply certain Webster Dictionaries to the public schools of Kansas, which said proposition and the dictionaries therein mentioned have been by said commission approved at a special meeting thereof, on September 1, 1899;

Now, therefore, in consideration of such approval of said proposi-

tion and of the dictionaries therein named, the said party of the first part hereby agrees and covenants that it will furnish to the school district boards and board of education of cities of the first or second class within the State of Kansas, desiring to purchase any of the said dictionaries, named in the proposition submitted by American Book Company, and at the prices therein named.

And the said American Book Company hereby covenants and agrees that it will in all things comply with and perform this contract in accordance with the terms and provisions of chapter 176 of the Laws of the State of Kansas passed in 1899, and all of the conditions and stipulations of every kind and character named, specified or stipulated in said chapter shall become and constitute a part and parcel of this agreement as fully and to the same extent as though each condition, specification or stipulation was set forth in full in the body hereof.

91 The State of Kansas is not to be held liable to said American Book Company for any sum of money whatever, but said American Book Company is to secure its pay and compensation solely and exclusively from the proceeds of the sale of said books.

Said party of the second part, as well as the parties of the first part, hereby agree to all of the terms, conditions and stipulations of the above and foregoing agreements.

In witness whereof, the parties hereunto have set their hands and seals this 22 day of September, A. D. 1899.

AMERICAN BOOK COMPANY.
CHAS. J. BARNES,
Managing Director at Chicago.
FRANK NELSON,
Chairman Text-book Commission.
W. J. HURD,
Secretary Text-book Commission."

Mr. HISTED: I also offer the bond in that connection.

Said bond is in words and figures as follows, to-wit:

"*Bond.*

"Know all men by these presents: That we, The American Book Company, of Chicago, Illinois, as principal, and Albert Sarbach and Max Sarbach, as sureties, are held and firmly bound unto the State of Kansas in the penal sum of one thousand dollars ($1000.00), for the payment of which sum well and truly to be made, we bind ourselves, jointly and severally, together with our assigns, administrators and heirs.

The condition of the foregoing obligation is such that whereas, on the 1st day of September, A. D. 1899, the proposition of said American Book Company, to furnish certain Webster School
92 Dictionaries to the school district boards and boards of education of cities of the first and second class of the State of Kansas, was approved by the School Text Book Commission of the State of Kansas, and in pursuance of such approval and the approval

of the said dictionaries furnished and supplied by the said American Book Company, a contract has this day been entered into by and between the said American Book Company and the said School Text Book Commission, providing and fixing the maximum at and for which said Webster Dictionaries may be sold, and by the terms of which the said American Book Company has agreed to furnish such dictionaries to school district boards and board- of education desiring to purchase the same, in accordance with the provisions of law and of the said proposition;

Now, therefore, if the said American Book Company shall well, truly and faithfully perform the conditions and agreements of said contract, and shall furnish said dictionaries to all school district boards and boards of education of cities of the first and second class desiring to purchase the same, in accordance with the provisions of said proposition, and at prices not greater than those mentioned therein, then this obligation shall be null and void; otherwise to be of full force and effect.

Witness our hands this 22 day of Sept. 1899.

AMERICAN BOOK COMPANY.
CHAS. J. BROWN,
Managing Director at Chicago.
ALBERT SARBACH.
MAX SARBACH.

STATE OF KANSAS, }
Jackson County, } ss:

Albert Sarbach and Max Sarbach, of lawful age, being each for himself first duly sworn, deposes and says that he is one of the sureties on the foregoing obligation and that he is worth the sum of one thousand dollars ($1,000.00) over and above all debts, exemptions and liabilities, so help us God.

93

ALBERT SARBACH.
MAX SARBACH.

Subscribed and sworn to before me this 22 day of September, A. D. 1899.

[SEAL.]

MARY C. BECKWITH,
Notary Public.

My commission expires Feb. 14, 1903.

The above and foregoing bond approved by the executive council of the State of Kansas this 27 day of September, A. D. 1899.

W. E. STANLEY, *Governor.*
GEO. A. CLARK,
Secretary of State.
F. E. GRIMES,
Treasurer of State.
GEO. E. COLE,
Auditor of State.
A. A. GODARD,
Attorney General.
FRANK NELSON,
Sup. of Pub. Instruction."

Q. Mr. Dillman, did you go on and carry out this contract I have offered?
A. Oh, yes sir.
Q. In 1899?
A. Yes sir.
Q. Is it finished, or are you still carrying it out?
A. Yes sir, we are still carrying it out.

(Witness excused.)

Mr. HISTED: We have a plea of another suit pending, and I offer a transcript of the record of the district court of Shawnee county, Kansas, in connection with this case.

Mr. QUINTON: We object to that as incompetent, irrelevant, immaterial, and not proper under the issues.

94 Chief Justice DOSTER: We will receive it and look at it.

Mr. QUINTON: To which ruling we except.

Said document is in words and figures as follows, to-wit:

"In the District Court of Shawnee County, Kansas.

THE STATE OF KANSAS, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 21691.

Petition.

Comes now the plaintiff herein, by Galen Nichols, the county attorney of the county of Shawnee in the State of Kansas, and for his cause of action herein says:

First. That the American Book Company is a corporation incorporated under and by virtue of the laws of a State other than the State of Kansas. That said American Book Company is a corporation engaged in the business of publishing and selling school books, and has been illegally engaged in the business of selling its books in the State of Kansas for the past three years, during which time it has presented to the school board of the State its books for use in the schools of Kansas, and has sold to the boards of education and to the pupils of the State of Kansas certain of its books and publications, and has entered into contract for the furnishing of school books, for use in the State, all of which books were published outside of the State of Kansas and by the said American Book Company. And the said American Book Company appeared before the Kansas State text book commission on the 5th day of May, 1902, in the city of Topeka, with a bid, offering to furnish certain school books for use in the schools of Kansas for the ensuing five years,

95 and were seeking to do business in the State of Kansas as a foreign corporation, through said text book commission, and did secure from said text book commission an adoption of

certain of its books for use in the schools of Kansas; and is now seeking to have said text book commission sign a contract with said American Book Company giving to said company the right to furnish the books so adopted. That all of its said acts in the soliciting of business in the State of Kansas for the sale of school books in the State of Kansas, and in its bid before the said text book commission, a commission provided for by the laws of the State of Kansas, the said American Book Company was acting in said county in violation of chapter 23 of the Compiled Laws of the State of Kansas of 1901, and has unlawfully and willfully persisted in such violation of the plain provision of said laws in this, to-wit:

First. That the said American Book Company has failed and neglected to make an application to the charter board of the State of Kansas for authority to do business in the State of Kansas as a foreign corporation.

Second. Said American Book Company has wilfully neglected for more than three years and for all of the time which *which* was illegally doing business in the State of Kansas to comply with the provisions of the statute requiring said corporation to file in the office of the secretary of state within thirty days after the taking effect of said act, to-wit: January 11, 1899, as a condition precedent to doing business in the State of Kansas, its written consent, irrevocable, that actions may be commenced against such corporation in the proper court of any county in this State, in which the cause of action arose.

Third. Said American Book Company has unlawfully and wilfully refused to file with the secretary of state a complete detailed statement of the condition of such corporation, as provided by said law, by reason of which said failure to file said statement by the said American Book Company, whatever right or authority
96 it had to do business in this State by reason of its claim, that it was doing business in this State at the time said corporation law took effect, all of defendant's rights, under and by virtue of the provisions of said law, have been forfeited and the said unlawful acts aforesaid and the unlawful continuance of the defendant to do business in the said State of Kansas have caused and are causing great injury to the plaintiff and to the public.

Whereupon the plaintiff prays judgment against the said defendant that all the rights and privileges of whatever kind the said defendant claims be declared forfeited and the said defendant be forever enjoined from doing business in the State of Kansas, and that the defendant be adjudged to pay the costs of this proceeding.

GALEN NICHOLS,
County Attorney of Shawnee Co., Kansas.

The clerk will please issue summons in the above entitled cause, directed to Geo. A. Clark, secretary of state, commanding him to summon the defendant American Book Co. to appear and answer in said case.

GALEN NICHOLS,
County Attorney, for Plaintiff.

Restraining order granted.
Filed this May 31st, 1902.

A. M. CALLAHAM,
Clerk District Court, Shawnee Co., Kansas.

In the District Court of Shawnee County, State of Kansas.

STATE OF KANSAS, Plaintiff,
vs.
AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 21691.

George W. Crane, being sworn according to law, says: That he is acquainted with the facts herein, and that there was this day filed a petition in the district court of Shawnee county against the defendant, a corporation, organized in a State other than the
97 State of Kansas, charging it with attempting to do business in the State of Kansas contrary to the provisions of the laws of said State; that said defendant is seeking to enter into a contract with the Kansas State school text book commission for the purpose of furnishing school books for use in the schools of the State of Kansas, which said contract would be in violation of chapter 23 of the General Statutes of 1901.

The said defendant book company having failed to comply with the provisions of said law by either making an application to the charter board of the State of Kansas as a foreign corporation, or by filing its annual statement as provided by law for those foreign corporations doing business in the State at the time of the taking effect of said act, and for having failed to comply with any of the provisions of said act relating to foreign corporations; that the signing of said contract with the school text book commission during this litigation would produce injury to the plaintiff and the public, and that such act would be in violation of the plaintiff's rights respecting the subject of this action and would tend to render the judgment ineffectual, he therefore asked that an injunction be granted restraining said defendant from entering into any contract with the Kansas school text book commission or with any other persons, and from the transaction of any business of any kind in the State of Kansas; and that on a final hearing of said application the said injunction may be made perpetual and the said defendant forever enjoined from doing business in the State of Kansas.

GEORGE W. CRANE.

Subscribed and sworn to before me this 29th day of May, 1901.

W. E. FAGAN,
Probate Judge.

Filed this 31st day of June, 1902.

98 UNITED STATES OF AMERICA.

STATE OF KANSAS, } ss:
Shawnee County, }

The State of Kansas to George A. Clark, secretary of state, Greeting:

You are hereby commanded to notify the American Book Company, a corporation, that it has been sued by the State of Kansas in the district court within and for the county of Shawnee, in the third judicial district of the State of Kansas, and that unless it answer by the 14 day of July, 1902, the petition of the said plaintiff against it filed in the clerk's office of the court aforesaid, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on or before the 12" day of June, A. D. 1902.

Witness my hand and the seal of said court, affixed at my office, in the city of Topeka, this 2 day of June, A. D. 1902.

A. M. CALLAHAM, *Clerk,*
[SEAL.] By I. S. CURTIS, *Deputy.*

STATE OF KANSAS, } ss:
Shawnee County, }

Received this summons this 2nd day of June, 1902, and executed the same by serving the following within named defendant at the time following and in the manner following, to-wit: By registered mail, addressed to Gilmore H. Tucker, secretary of the defendant corporation, at New York city, New York.

[SEAL.] GEO. A. CLARK,
Secretary of State,
By HILL P. WILCOX,
Assistant Secretary of State.

Be it remembered that on this 2nd day of June, 1902, in the Shawnee county district court, third judicial district, State of Kansas, it being at the regular April 1902 term of said court, before the Hon. Z. T. Hazen, presiding judge, at which time the following proceedings among others were had, to-wit:

99 STATE OF KANSAS, Plaintiff,
vs.
AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 21691.

Now on this 2nd day of June, 1902, the application for temporary injunction, heretofore filed in this case, came on for hearing before the court, and is by the court denied and excepted to, and the restraining order heretofore granted is set aside and excepted to.

Be it remembered that on this 31st day of May, 1902, in the Shawnee county district court, third judicial district, State of Kansas, it being at the regular April term 1902 of said court, before Hon. Z. T. Hazen, presiding judge, at which time the following proceedings among others were had, to-wit:

THE STATE OF KANSAS, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 21691.

Now on this 31st day of May, 1902, the sworn petition having been presented to the undersigned judge of the district court, asking for an injunction, and upon such sworn petition, the judge grants a restraining order and sets the application for a temporary injunction for Tuesday, June 3rd, 1902, at 9 o'clock a. m. at the court house, and in the mean time the defendant is restrained from entering into any contract such as plaintiff is seeking to enjoin by its petition.

100 STATE OF KANSAS, } ss:
Shawnee County, }

I, A. M. Callaham, clerk of the district court within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above entitled cause, as the same appears on file and of record in my office.

Witness my hand and the seal of said court, hereunto affixed at my office in the city of Topeka this 19 day of July, A. D. 1902.

[SEAL.] I. S. CURTIS, *Clerk.*

Thereupon the defendant rested its case.

Thereupon the plaintiff, to maintain the issues upon its
101 part, offered evidence as follows, to-wit:

Mr. QUINTON: Will it be admitted that those are all the papers of any character on file in the secretary of state's office?

Mr. HISTED: I think that is true.

Mr. QUINTON: We have recently had an affidavit made to that effect.

Chief Justice DOSTER: We have recently held that certificates or statements by public officers or keepers of records, stating facts negatively, are inadmissible.

Mr. HISTED: We concede this fact, that those are all the papers filed.

Mr. QUINTON: We offer, then, the secretary of state's certificate to that effect.

Said document is in words and figures as follows, to-wit:

"STATE OF KANSAS,
Executive Department,

OFFICE OF THE SECRETARY OF STATE.

I, Geo. A. Clark, secretary of state of the State of Kansas, do hereby certify that the resolution of the board of directors of the American Book Company, the annual statement of the American Book Company, the written consent to accept service of process on the secretary of state, and the affidavit of A. W. Clancy, agent of the American Book Company, are all the papers of record now on file in the office of the secretary of state relative to the right of the American Book Company to transact business in the State of Kansas.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 2nd day of June, A. D. 1902.

[SEAL.]

GEO. A. CLARK,
Secretary of State,
By HILL P. WILSON,
Assistant Secretary of State."

102 Thereupon the plaintiff rested its case.

Chief Justice DOSTER: We will give you the usual time for argument—one hour on a side. To our minds, however, there are really but few questions. One is whether the fact that the defendant company may have been misled by an erroneous interpretation of the law, assuming it to be erroneous, will help to control the decision in granting or refusing the writ; and the other is whether the filing of these papers at the time they were filed was a compliance with the statute; and third, whether under the record there is another suit pending. Proceed with the argument.

And thereupon counsel for the respective parties argued said cause, and the court took said cause under consideration.

And the above and foregoing is all the evidence offered and admitted, and offered and rejected upon the trial of the cause, with all objections, rulings and exceptions, motions and demurrers made upon said trial, and is in all respects a full, true and complete transcript of all proceedings had upon the trial of said cause.

103 And thereafter the court rendered its judgment, ousting said defendant, The American Book Company, from the exercise of its right to transact business as a corporation in the State of Kansas until its compliance with the statutes of said State of Kansas; and the said American Book Company, defendant, then and there duly excepted and still excepts to said judgment, and it prays that this its bill of exceptions be allowed and signed at this the same term of court at which said trial was had, and that the same may be filed and made a part of the record herein; which is accordingly done.

Witness my hand as chief justice of the said court and for the court, on this 6th day of August, at the July term of said court for said year 1902.

FRANK DOSTER,
Chief Justice.

(Endorsed:) Filed Aug. 6", 1902. D. A. Valentine clerk supreme court. 13194 State *ex. rel. vs.* American Book Co. Bill of exceptions.

104 And afterwards, and on the same day, to-wit, the 6th day of August 1902 the plaintiff in the above entitled action filed its application for an order of injunction which said application is in words and figures following, to-wit:

105 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. —.

STATE OF KANSAS, }
Shawnee County. }

Application.

Galen Nichols being sworn according to law, deposes and says; that he is the attorney of Shawnee county and the attorney for plaintiff in the above entitled cause; that on the 4th day of August, 1902, the said defendant, The American Book Company, pretending to comply with the laws of this State, relating to foreign corporations, filed with the charter board of said State, an application for a certificate of authority to do business in the State of Kansas, and as a part of its said application, it filed a statement, purporting to be a statement showing its resources and liabilities in words and figures as follows, to wit:

Resources.		*Liabilities.*	
Bills receivable	$256898.94	Capital paid up	$5000000.00
Real estate	1820.71	Surplus	1223821.74
Personal property	5287557.11	Undivided profits	
Stocks, bonds & other securities		Bills payable	448500.00
Merchandise	1255380.31	Accounts payable	146541.86
Cash on hand	190357.97	Bonded indebtedness	800000.00
Due from banks		Encumbrance on real estate or plant	
Accounts receivable	626848.56		
Judgments			
Total	7618863.60		7618863.60

106 Which said statement affiant alleges is not in compliance with the law, requiring a detailed statement of its assets and liabilities; that from said statement, so filed, it is impossible to determine the solvency of said company; that said statement is all of said application filed by said company, showing the condition of its

assets and liabilities, and on the filing of said application, the said charter board issued to the defendant company a certificate of authority to do business over the objection of this affiant who filed a protest, copy of which is attached. But affiant says that the procuring of said certificate is not a compliance of said company with the order of this court; that it is not in compliance with the laws of the said State; and affiant believes and alleges the fact to be that the said defendant will, unless restrained by the order of this court, attempt to do business in the State of Kansas, and to carry out its contracts in violation of the order of ouster, rendered by this court, and its acts will be in violation of the plaintiff's rights, respecting the subject of this action, and will render the judgment ineffectual and a contempt of the orders of this court.

Wherefore, he asks that this court enjoin said defendant from attempting or in any wise, carrying out any of its contracts in this State or from exercising any rights claimed by its charter and he will ever pray. Further affiant says not.

I do solemnly swear the above statement is true, so help me God.

GALEN NICHOLS.

Subscribed and sworn to before me this 5th day of August, 1902.

M. F. LAYCOCK,
Notary Public.

My commission expires April 4, 1906.

[SEAL.]

107 STATE OF KANSAS:

OFFICE OF THE SECRETARY OF STATE.

I, Geo. A. Clark, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy in the matter of the application of "the American Book Company."

Objection to statement and request of Galen Nichols, county attorney for the State, filed on August 4th, 1902.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 4th day of August, A. D. 1902.

GEO. A. CLARK,
Secretary of State.

[SEAL.]

108 To the honorable charter board, State of Kansas:

In the matter of the application of the American Book Company for a charter, I respectfully submit that the statement filed by it is not in accordance with the laws of the State governing foreign corporations in this to-wit: The statement does not show a detailed statement of its assets and liabilities and I will ask that you require from them not only a detailed statement showing the items of their personal property, but also the items and dates of their bills receiv-

able, and of their accounts, and also to list any stock held by it in any other corporation, also that said company be required to produce its books of accounts for the past two years. I believe that in this way only can your board determine the solvency of said company, and whether it is in a condition to comply with the laws of the State. I believe that a full investigation of the affairs of this company is a duty this board owes to the State, and will result in hardship to none, but will save litigation and expense, and I ask for the information and statement on behalf of the State.

Respectfully, GALEN NICHOLS, *Co. Att'y.*

(Endorsed:) 13194. State *vs.* American Book Co. Application for order of injunction. Filed Aug. 6" 1902 D. A. Valentine, clerk supreme court.

109 Be it remembered, that on Wednesday, August 6th, the same being one of the regular judicial days of the July 1902 term of the supreme court of the State of Kansas, said court being in session at its court room in the city of Topeka, there being present, Honorable Frank Doster, chief justice Honorable W. A. Johnston and Honorable A. L. Greene, justices, the following proceeding was had and remains of record at page 193 of Journal " FF " in words and figures following:

THE STATE OF KANSAS *ex Rel.*, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } No. 13194.

Now come counsel for plaintiff and present their application for an order of this court to enjoin the defendant herein from attempting or in any wise carrying out any of its contracts in this State; or from exercising any rights claimed by its charter; and thereupon, after due consideration by the court it is ordered that said application for an order of injunction be denied.

110 And afterwards, and on the 11th day of August, 1902 the defendant in said action filed its petition and assignment of error which said petition and assignment of error is in words and figures, following, to-wit:

111 In the Supreme Court of the United States.

THE AMERICAN BOOK COMPANY, Plaintiff in Error,
vs.
THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Defendant in Error.

Comes now The American Book Company, plaintiff in error in the above-entitled cause, and says, that in the record and proceedings of the supreme court of the State of Kansas in said cause there

is manifest error, and said plaintiff in error makes the following assignment of errors:

I.

The supreme court of the State of Kansas erred in holding that paragraph three of the answer of the plaintiff in error did not constitute a defense and in sustaining the objection to the admission of any evidence in support thereof.

II.

The supreme court of the State of Kansas erred in holding that chapter 10 of the Laws of 1898, as amended by chapter 125 of the Laws of 1901, in so far as the same constitutes a regulation of foreign corporations engaged solely in the business of interstate commerce, is not violative of section 8 of article 1 of the Constitution of the United States, and in denying the protection of said Constitution invoked by the defendant upon said trial.

III.

The supreme court of the State of Kansas erred in holding that the fact that the business of the defendant was solely inter-state commerce constituted no defense to the plaintiff's petition, and in refusing to allow evidence in support of such defense, and in entering judgment of ouster against the defendant, enjoining and prohibiting it from engaging in inter-state commerce within the State of Kansas.

112

IV.

The supreme court of the State of Kansas erred in holding that the provisions of the act of 1898, as amended by chapter 125 of the Laws of 1901, in so far as they require foreign corporations engaged solely in the business of interstate commerce to file copies of their charters and pay the charter fees therein provided, do not constitute a regulation and restriction upon interstate commerce within the prohibition of the Constitution of the United States.

V.

The supreme court of the State of Kansas erred in holding that the terms of said act of the legislature of the State of Kansas, in so far as they apply in any respect to foreign corporations, whose business in the State of Kansas is solely that of interstate commerce, are not in violation of section 8 of chapter 1 of the Constitution of the United States.

VI.

The supreme court of the State of Kansas erred in rendering a judgment of ouster in said cause against this defendant.

VII.

The supreme court of the State of Kansas erred by its judgment o ouster denying to this defendant the right to perform contracts made by this defendant for the sale of certain school books and supplies in Kansas, prior to the passage of the act of 1898, and in excluding said defendant absolutely from the State of Kansas, thereby so construing the said act of 1898, as amended by the act of 1901, as to render it violative of section 10 of article 1 of the Constitution of the United States in that it impaired the obligations of said defendant's contracts.

113 VIII.

The supreme court of the State of Kansas erred in denying the protection claimed by said defendant under section 10 of article 1 of the Constitution of the United States, against the law of 1898, as amended by the law of 1901, in so far as it attempted to impair the obligation of contracts of said defendant made prior to the passage of said law.

Wherefore, your petitioner respectfully prays that a writ of error may be issued out of this court, directed to the supreme court of the State of Kansas, commanding said court to serve and send to this court a full and complete transcript of the records and all proceedings of said supreme court of the State of Kansas in said case wherein The State of Kansas *ex rel.* Galen Nichols, county attorney of Shawnee county is plaintiff, and The American Book Company is defendant, and that your petitioner may have such other and further relief and remedy in the premises as to this court may seem appropriate, and that said judgment of said supreme court of the State of Kansas in said case and every part thereof may be reversed by this honorable court.

And your petitioner will ever pray.

THE AMERICAN BOOK COMPANY,
By ROSSINGTON, SMITH AND HISTED,
F. DUMONT SMITH, AND
A. M. HARVEY, *Its Att'ys.*

(Endorsed :) 13,194. U. S. Supreme Court The American Book Co. *vs.* The State of Kansas *ex rel.*, Galen Nichols, Co. att'y of Shawnee county. Petition and assignment of errors. Filed Aug. 11th, 1902. D. A. Valentine, clerk supreme court. Rossington, Smith & Dallas, attorneys for pl'ff in error.

114 And thereupon, and on the said 11th day of August 1902 before Honorable Frank Doster, chief justice of the supreme court of the State of Kansas at his chambers in the city of Topeka the following proceeding was had and remains of record at page — of Journal FF in words and figures following, to-wit:

STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant. } No. 13194.

Upon consideration of the petition of The American Book Company, the defendant in the above entitled cause, the court does allow the writ of error prayed for therein, upon The American Book Company giving a bond according to law in the sum of five hundred dollars ($500.00).

115 And on the same day, to-wit, the 11th day of August, 1902 said defendant filed its supersedeas bond as required by the foregoing order allowing the writ of error and said bond is in words and figures following, to wit:

116–120 In the Supreme Court of the State of Kansas.

STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, Defendant.

Know all men by these presents, that we, The American Book Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as principal, and The American Bonding Company of Baltimore, as surety, are held and firmly bound unto the State of Kansas in the sum of five hundred dollars, to which payment well and truly to be made we bind ourselves, jointly and severally, and all and each of our heirs, successors and executors and administrators, firmly by these presents.

Sealed with our seal this eighth day of August, 1902.

Whereas, the above named The American Book Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Kansas,

Now, therefore, the condition of this obligation is such that if the above named The American Book Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and effect.

[SEAL.] THE AMERICAN BOOK COMPANY,
By CHAS. BLOOD SMITH, *Its Att'y.*

Attest: FRANK H. FOSTER, *Ass't Sec'y.*

AMERICAN BONDING COMPANY
OF BALTIMORE,
By J. W. THURSTON, *Vice President.*

Approved:
FRANK DOSTER,
Chief Justice of the Supreme Court
of the State of Kansas.

(Endorsed:) 13194. Bond for appeal. Filed Aug. 11 1902. D. A. Valentine clerk supreme court.

121 The United States of America to the State of Kansas *ex rel.* Galen Nichols, county attorney of Shawnee county:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein The American Book Company is plaintiff in error, and The State of Kansas on the relation of Galen Nichols, county attorney of Shawnee county, is defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Honorable Frank Doster, chief justice of the supreme court of the State of Kansas this 11 day of August, 1902.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

I accept service of the above this 11th day of August 1902.

GALEN NICHOLS,
Co. Att'y and Att'y for Pl'ff.

(Endorsed:) No. 13194. Citation.

122 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS *ex Rel.* GALEN NICHOLS, County Attorney Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 13194.

I, D. A. Valentine, clerk of the supreme court of the State of Kansas do hereby certify that the above and foregoing is a full, true, correct and complete transcript of the record in the above entitled cause in said supreme court of Kansas.

Seal Supreme Court, State of Kansas.

Witness my hand and the seal of the supreme court of the State of Kansas hereto affixed at my office in the city of Topeka, this 19th day of August, A. D. 1902.

D. A. VALENTINE,
Clerk Supreme Court of the State of Kansas.

123 In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS on the Relation of GALEN NICHOLS, County Attorney of Shawnee County, Plaintiff,
vs.
THE AMERICAN BOOK COMPANY, a Corporation, Defendant. } No. 13194.

Pursuant to a writ of error issued out of the United States circuit court for the district of Kansas on the 11th day of August, 1902, and directed to the supreme court of the State of Kansas, and in obedience to the command thereof, I, D. A. Valentine, clerk of the supreme court of the State of Kansas, do herewith transmit to the Supreme Court of the United States a duly certified transcript of the record, and all proceedings of this court, in the within entitled cause, with all things concerning the same, to-gether with the original writ of error and citation with acceptance of service thereof, hereto attached.

Seal Supreme Court, State of Kansas.

Witness my hand and the seal of the supreme court of Kansas hereto affixed at my office in Topeka this 19th day of August, A. D. 1902.

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

124 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of Kansas, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court of Kansas, before you, being the highest court of law and equity in said State, in which a decision could be had in said suit between The State of Kansas, *ex rel.* Galen Nichols, county attorney of Shawnee county, plaintiff, and The American Book Company, defendant, wherein a right, privilege and immunity were and are claimed under the Constitution and statutes of the United States, and the decision was against the right, privilege and immunity claimed thereunder, a manifest error hath happened to the great damage of said The American Book Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at Washington on or before the 10th day of September, 1902, next, in said Supreme Court, to be then and there held, to the end that the

record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11th day of August,
125 in the year of our Lord one thousand, nine hundred two.

Issued at office in the city of Topeka with the seal of the circuit court of the United States for the first division of the judicial district of Kansas, dated as aforesaid.

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

GEO. F. SHARITT,
Clerk Circuit Court United States, First Division of the Judicial District of Kansas.

Allowed:

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

[Endorsed:] 13194. Writ of error. Filed Aug. 11, 1902. D. A. Valentine, clerk supreme court.

126 The United States of America to the State of Kansas *ex rel.* Galen Nichols, county attorney of Shawnee county:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein The American Book Company is plaintiff in error, and The State of Kansas on the relation of Galen Nichols, county attorney of Shawnee county, is defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Honorable Frank Doster, chief justice of the supreme court of the State of Kansas this 11 day of August, 1902.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

I accept service of the above this 11th day of August 1902.

GALEN NICHOLS,
Co. Att'y and Att'y for Pl'ff.

[Endorsed:] 13194 Citation. Filed Aug. 11, 1902. D. A. Valentine, clerk supreme court.

Endorsed on cover: File No. 18658. Kansas supreme court. Term No. 126. The American Book Company, plaintiff in error, *vs.* The State of Kansas *ex rel.* Galen Nichols, county attorney of Shawnee county. Filed September 2, 1902.